
United States
Circuit Court of Appeals

For the Ninth Circuit.

THOMAS ANDREWS, *alias* THOMAS J.
MURPHY, and GEORGE POOLE, *alias*
GEORGE MOORE,
Plaintiffs in Error,
vs.

THE UNITED STATES OF AMERICA,
Defendant in Error.

Transcript of Record.

Upon Writ of Error to the United States District Court
of the Northern District of California,
First Division.

Filed

JAN 18 1915

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur. Title heads inserted by the Clerk are enclosed within brackets.]

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UNITED STATES OF AMERICA.

*District Court of the United States, Northern
District of California, First Division.*

CLERK'S OFFICE.

No. 5345.

UNITED STATES OF AMERICA

vs.

THOMAS ANDREWS, *alias* THOMAS J. MUR-
PHY, GEORGE POOLE, *alias* GEORGE
MOORE, CHARLES BENTON and CHUNG
KAW,

Defendants.

Praeipce [for Transcript of Record].

To the Clerk of Said Court:

Sir: Please make return on writ of error in above cause by transmitting to the Clerk of the United States Circuit Court of Appeals, Ninth Judicial Circuit, a true copy of the record, opinion or opinions of the Court, bill of exceptions, assignment of errors, and all proceedings in the above-entitled cause under your seal particularly including indictment, plea, minutes of trial, verdicts impaneling jury, orders, motions to set aside verdicts, for new trial and in arrest of judgment, affidavits, sentence, judgment, transcript, petition for writ of error, order allowing writ of error, assignment of errors, supersedeas bond, bond for costs, bond of George Poole, bond of Thomas J. Murphy, writ of error. All of the above to be transmitted to and lodged with the Clerk of said Cir-

cuit Court of Appeals within Thirty (30) days from the 18th day of November, 1913.

Dated this 19th day of November, 1914.

WM. F. ROSE,
BRUCE GLIDDEN,

Attorneys for Defendants.

[Endorsed]: Filed Nov. 19, 1914. W. B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk. [1*]

Indictment.

In the District Court of the United States, in and for the Northern District of California, First Division.

At a stated term of said Court begun and holden at the City and County of San Francisco within and for the State and Northern District of California on the second Monday of July in the year of our Lord one thousand nine hundred and thirteen,—

The Grand Jurors of the United States of America, within and for the State and District aforesaid, on their oaths present: THAT

THOMAS ANDREWS, *alias* Thomas J. Murphy, GEORGE POOLE, *alias* George Moore, CHARLES BENTON, and CHUNG KAW, hereinafter called the defendants, heretofore, to wit, on the first day of May in the year of our Lord one thousand nine hundred and thirteen, at the City and County of San Francisco in the State and Northern District of California then and there being, did then and there knowingly, wilfully, wickedly, unlawfully, corruptly and

feloniously, conspire, combine, confederate and agree together and with divers other persons whose names are to the Grand Jurors aforesaid, unknown, to commit an offense against the United States, that is to say:

Violation
Sec. 37,
C. C. U. S.,
and Act
Feb. 9, 09.

They, the said defendants, did, at the time and place aforesaid, knowingly, wilfully, unlawfully, wickedly, corruptly and feloniously conspire, combine, confederate and agree together and with said divers other persons whose names are, as aforesaid, to the Grand Jurors unknown, to wilfully, unlawfully, feloniously, fraudulently [2] and knowingly import and bring into the United States from Mexico, by way of El Paso, Texas, thence to the city of San Francisco, in the State and District aforesaid, and assist in so doing, certain opium and certain preparations and derivatives thereof, to wit, a large amount of opium prepared for smoking purposes, the exact amount of which is to the Grand Jurors aforesaid, unknown, and for that reason not herein set forth, contrary to law.

That said conspiracy, combination, confederation and agreement between the said defendants and the said divers other persons whose names are, as aforesaid, to the Grand Jurors unknown, was continuously throughout all of the time from and after the said first day of May, in the year of our Lord one thousand nine hundred and thirteen, and at all of the times in this count of this indictment mentioned and referred to, and particularly at the time of the commission of each and all of the overt acts in this count of this indictment hereinafter set forth, in existence

and process of execution.

And the Grand Jurors aforesaid, on their oaths aforesaid, do further state: That in furtherance of said conspiracy, combination, confederation and agreement, and to effect and accomplish the object thereof, the said CHARLES BENTON, GEORGE POOLE, *alias* George Moore, and THOMAS ANDREWS, *alias* Thomas J. Murphy, on the eleventh day of September, 1913, brought from El Paso, Texas, to the City and County of San Francisco in the State and Northern District of California, two trunks containing opium illegally imported into the United States.

And the Grand Jurors aforesaid, on their oaths aforesaid, do further state: That in furtherance of said [3] conspiracy, combination, confederation and agreement, and to effect and accomplish the object thereof, the said THOMAS ANDREWS, *alias* Thomas J. Murphy, on the fifteenth day of September, 1913, delivered to Chung Kaw in the store of Quong Fat Chong Co. at number thirty Waverly Place in the City and County of San Francisco, in the State and Northern District of California, a quantity of contraband opium.

And the Grand Jurors aforesaid, on their oaths aforesaid, do further state: That in furtherance of said conspiracy, combination, confederation and agreement, and to effect and accomplish the object thereof, the said THOMAS ANDREWS, *alias* Thomas J. Murphy, on the seventeenth day of September, 1913, took from the home of Charles Benton at number 1346A Stevenson Street in the City and

County of San Francisco in the State and Northern District of California, two trunks used by the defendants herein for smuggling opium, and left the said trunks in the keeping of one William Roberts at number 61 Duboce Avenue, in the City and County of San Francisco, State and District aforesaid.

And the Grand Jurors aforesaid, on their oaths aforesaid, do further state: That in furtherance of said conspiracy, combination, confederation and agreement, and to effect and accomplish the object thereof, the said THOMAS ANDREWS, *alias* Thomas J. Murphy, on the thirteenth day of September, 1913, purchased a railroad ticket from Trinidad, in the State of Colorado, to the City and County of San Francisco in the State and Northern District of California, for which he paid the sum of forty-four dollars and twenty [4] cents (\$44.20), and excess on baggage containing opium the sum of seventeen dollars and two cents (\$17.02).

AGAINST the peace and dignity of the United States of America, and contrary to the form of the statute of the said United States of America in such case made and provided.

SECOND COUNT.

And the Grand Jurors aforesaid, on their oaths aforesaid, do further present: THAT

THOMAS ANDREWS, *alias* Thomas J. Murphy, GEORGE POOLE, *alias* George Moore, CHARLES BENTON, and CHUNG KAW, hereinafter called the defendants, heretofore, to wit, on the first day of May, in the year of our Lord one thousand nine hundred and thirteen, at the City and County of San

Francisco in the State and Northern District of California then and there being, did then and there knowingly, wilfully, wickedly, unlawfully, corruptly and feloniously conspire, combine, confederate and agree together and with divers other persons whose names are to the Grand Jurors aforesaid, unknown, to commit an offense against the United States, that is to say:

They, the said defendants, did, at the time and place aforesaid, knowingly, wilfully, unlawfully, wickedly, corruptly and feloniously conspire, combine, confederate and agree together and with said divers other persons whose names are, as aforesaid, to the Grand Jurors unknown, to wilfully, unlawfully, feloniously, fraudulently and knowingly receive, conceal and facilitate the transportation and concealment after importation, certain [5] opium and certain preparations and derivatives thereof, to wit, a large amount of opium prepared for smoking purposes, the exact amount of which is to the Grand Jurors aforesaid, unknown, and for that reason not herein set forth, contrary to law, and which said opium prepared for smoking purposes would be, as each of the defendants then and there well knew, opium which had been theretofore imported into the United States contrary to law, from Mexico by way of El Paso in the State of Texas, thence to the City of San Francisco in the State and District aforesaid.

That said conspiracy, combination, confederation and agreement between the said defendants and the said divers other persons whose names are, as aforesaid, to the Grand Jurors unknown, was continu-

ously throughout all of the time from and after the said first day of May, in the year of our Lord one thousand nine hundred and thirteen, and at all of the times in this count of this indictment mentioned and referred to, and particularly at the time of the commission of each and all of the overt acts in this count of this indictment hereinafter set forth, in existence and process of execution.

And the Grand Jurors aforesaid, on their oaths aforesaid, do further state: That in furtherance of said conspiracy, combination, confederation and agreement, and to effect and accomplish the object thereof, the said CHARLES BENTON, GEORGE POOLE, *alias* George Moore, and THOMAS ANDREWS, *alias* Thomas J. Murphy, on the eleventh day of September, 1913, brought from El Paso, in the State of Texas, to the City and County of San Francisco in the State and Northern District of California, two trunks containing opium illegally imported into the United States. [6]

And the Grand Jurors aforesaid, on their oaths aforesaid, do further state: That in furtherance of said conspiracy, combination, confederation and agreement, and to effect and accomplish the object thereof, the said THOMAS ANDREWS, *alias* Thomas J. Murphy, on the fifteenth day of September, 1913, delivered to Chung Kaw in the store of Quong Fat Chong Co., at number thirty Waverly Place, in the City and County of San Francisco, in the State and Northern District of California, a quantity of contraband opium.

And the Grand Jurors aforesaid, on their oaths

aforesaid, do further state: That in furtherance of said conspiracy, combination, confederation and agreement, and to effect and accomplish the object thereof, the said THOMAS ANDREWS, *alias* Thomas J. Murphy, on the seventeenth day of September, 1913, took from the home of Charles Benton at number 1346A Stevenson Street in the City and County of San Francisco, in the State and Northern District of California, two trunks used by the defendants herein for smuggling opium, and left the said trunks in the keeping of one William Roberts at number 61 Duboce Avenue, in the City and County of San Francisco, State and District aforesaid.

And the Grand Jurors aforesaid, on their oaths aforesaid, do further state: That in furtherance of said conspiracy, combination, confederation and agreement, and to effect and accomplish the object thereof, the said THOMAS ANDREWS, *alias* Thomas J. Murphy, on the thirteenth day of September, 1913, purchased a railroad ticket from Trinidad, in the State of Colorado, to the City and County of San Francisco in the State and Northern District of [7] California, for which he paid the sum of forty-four dollars and twenty cents (\$44.20), and excess on baggage containing opium, the sum of seventeen dollars and two cents (\$17.02).

AGAINST the peace and dignity of the United States of America, and contrary to the form of the statute of the said United States of America in such case made and provided.

BENJAMIN L. MCKINLEY,

United States Attorney.

Names of witnesses appearing before the Grand Jury: Melville F. Stevens, Harry F. Walsh, Lee G. Dean, Joseph Head, Ray Mustard, Wm. H. Blaney, William Roberts, Martin Baker, Wm. H. Tidwell, E. E. Enlow, Chas. W. Dixon, Mary Nelson, Dosh Katona, R. H. McCormick, G. R. Schmalke, Maud Fay, Geo. Cassidy, Capt. J. T. Stone, John Toland, A. E. Carrere, Louise Loraine, Agnes Berrier, John W. Smith, John H. Davison.

[Endorsed]: A True Bill. John R. Hanify, Foreman Grand Jury. Presented in Open Court and Filed Oct. 7, 1913. W. B. Maling, Clerk. By Francis Krull, Deputy Clerk. [8]

At a stated term of the District Court of the United States of America for the Northern District of California, First Division, held at the courtroom thereof, in the City and County of San Francisco, on Wednesday, the 8th day of October, in the year of our Lord, one thousand, nine hundred and thirteen. Present: The Honorable M. T. DOOLING, Judge.

#5345.

UNITED STATES

vs.

THOMAS ANDREW, *alias*, etc., and GEORGE POOLE, *alias*, etc.

Pleas of Defendants.

The defendants being present in open court with their counsel, each of said defendants was then and there duly arraigned upon the indictment herein

against him, to which said indictment each defendant then and there pleaded not guilty, which said plea was by the Court ordered and is hereby entered. Further ordered that the order heretofore entered fixing bail of each of said defendants in the sum of \$2,000 be, and the same is hereby vacated and bail be and the same is hereby fixed in the sum of \$5,000 as to each of said defendants. Case continued until October 11, 1913, to be set for trial. [9]

At a stated term of the District Court of the United States of America, for the Northern District of California, First Division, held at the courtroom thereof, in the City and County of San Francisco, on Thursday, the 20th day of November, in the year of our Lord one thousand nine hundred and thirteen. Present: The Honorable M. T. DOOLING, Judge.

#5345.

UNITED STATES

vs.

THOMAS ANDREWS and GEORGE POOLE.

Impanelment of Jury, etc.

The defendants herein being present in open court with their counsel, Messrs. George E. Price, Archie Campbell and Wm. J. Danford on motion of the U. S. Atty., by the Court ordered that the trial of this case do now proceed; the defendants thru their counsel made a motion to withdraw their pleas of not guilty heretofore entered herein and interpose a demurrer to the indictment, which said motion was by

the Court denied. The following named jurors were duly drawn, sworn, examined and impaneled to try this case, to wit: Thomas C. Maher, Thos. A. Burns, Martin O'Connell, John T. Gilmartin, John Reid, R. E. Herdman, J. M. Taft, Albert N. Meals, H. L. Stilwell, B. G. Allen, Wm. F. Murrya, and A. Christianson.

The Government excused Fred Becker a juror drawn.

The defendants excused the following jurors drawn: Fred G. Ganter, F. H. Babb, Chas. R. Nauert.

Thereupon the further trial of this case was continued until to-morrow at 10 o'clock A. M. [10]

At a stated term of the District Court of the United States of America, for the Northern District of California, First Division, held at the courtroom thereof, in the City and County of San Francisco, on Friday, the 21st day of November, in the year of our Lord one thousand nine hundred and thirteen. Present: The Honorable M. T. DOOLING, Judge.

#5345.

UNITED STATES

vs.

THOMAS ANDREWS and GEORGE POOLE.

Minutes of Trial.

The defendant herein with their counsel and the jury sworn to try the case being present in open court, the further trial of this case was resumed. Mr. Selvage, Asst. U. S. Atty., called Harry F.

Walsh, Joseph Head, Fred West, John H. Dawson, Herman A. Kellum (interpreter), Raphael Manzo, Guillermo McAlpine, J. E. Benton, Charles R. Miller, who were each duly sworn and examined on behalf of the Government, and recalled Joseph Head, and called Charles W. Dixon, George Cassidy, Miss Marie Nelson, who were each duly sworn and examined on behalf of the Government and recalled Joseph Head, and called John Endicott Gardner (interpreter), and Louie Sang, who were each duly sworn and examined. The Government introduced certain exhibits which were marked from 1 to 22 inclusive. The further trial was then continued until to-morrow at 10 o'clock A. M. [11]

At a stated term of the District Court of the United States of America, for the Northern District of California, First Division, held at the courtroom thereof, in the City and County of San Francisco, on Saturday, the 22d day of November, in the year of our Lord, one thousand nine hundred and thirteen. Present: the Honorable M. T. DOOLING, Judge.

#5345.

UNITED STATES

vs.

THOMAS ANDREWS and GEORGE POOLE.

Minutes of Trial.

The defendants with their counsel and the jury sworn to try this case being present in open court the further trial of this case was resumed. Mr. Selvage

called F. W. Lynch, who was duly sworn and examined and recalled Fred West, Rafael Manzo who were each further examined, and called R. H. McCormick, and Dash Katoni, who were each sworn and examined. R. H. McCormick recalled. Maud Fay, F. G. Samally, Louise Loraine, John W. Smith, John T. Stone, Wm. Roberts, Martin Baker, B. O. Huffeker, each duly sworn and examined as witnesses on behalf of the Government. The Government introduced certain exhibits which were marked U. S. Exhibits #23 to #30, inclusive. Mr. Price recalled Louie Sang, as a witness on behalf of defendant, and called B. M. Sanaues, A. Habberly, who were sworn and examined for defendant. Mr. Selvage called E. E. Enlow, who was sworn and examined in rebuttal. The case was then argued by respective counsel. The Court charged the jury, who at 5:20 o'clock P. M., retired to deliberate upon their verdict and at 5:50 o'clock P. M., returned into court, and upon being asked if they had agreed upon a verdict each said they had and then and there rendered the [12] following verdict in writing, which was by the Court ordered recorded, and each juror responded upon being asked if that was his verdict, that it was, viz.: "We, the Jury, find Thomas Andrew, *alias* Thomas J. Murphy, the defendant, at the bar, Guilty on all counts: We, the jury, find George Poole, *alias* George Moore, the defendant, at the bar, Guilty on all counts." By the Court ordered that defendants be remanded to the custody of the U. S. Marshal. Further ordered that said defendants appear for judgment on Nov. 29, 1913. [13]

*In the District Court of the United States, in and
for the Northern District of California, First
Division.*

No. 5345.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

THOMAS ANDREWS, *alias* THOMAS J. MUR-
PHY and GEORGE OLIN POOLE, *alias*
CHARLES MOORE,

Defendants.

Bill of Exceptions of Defendants.

BE IT REMEMBERED, that on the 20th day of November, 1913, the above-entitled cause came on for trial before the above-entitled court, the Honorable Maurice T. Dooling, Judge presiding. The plaintiff appearing by Benjamin McKinley, Esq., United States Attorney and T. H. Selvage, Esq., assistant United States Attorney and defendants Thomas Andrews, *alias* Thomas J. Murphy and George Olin Poole, *alias* Charles Moore, appearing by Messrs. George E. Price, Archie Campbell and William G. Danforth.

WHEREUPON, the following proceedings were had:

Mr. PRICE.—May it please the Court after the pleas of not guilty of defendants Murphy and Poole, both Mr. Danford and I came into the case, and at this time we ask permission to withdraw the pleas

merely for the purpose of interposing a demurrer to the indictment.

The COURT.—The motion is denied.

Mr. PRICE.—Exception.

THEREUPON a jury in the above-entitled court was regularly impaneled to try the same, and the cause was thereupon regularly [14] continued to the 21st day of November, 1913, for trial, whereupon the following proceedings took place:

Mr. DANFORD.—If your Honor please, yesterday, before impaneling the jury, Mr. Price, counsel for defendants asked for leave to withdraw the plea and to introduce a demurrer and assigned as the reason that counsel had come into the case subsequently to the plea, meaning himself and myself. Just to protect the record we wish to renew the motion at this time, not for that reason but for the reason that the indictment is faulty, jurisdictionally faulty. We ask now for the privilege of making that motion, and we would like to have a ruling.

The COURT.—The motion will be denied.

Mr. DANFORD.—We note an exception.

Testimony of Harry F. Walsh, for the Government.

HARRY F. WALSH, called for the United States, sworn.

Mr. SELVAGE.—Q. Your name is Harry F. Walsh? A. Yes, sir.

Q. Where do you reside?

A. 925 Alabama Street.

Q. What is your business or occupation?

A. Police Officer of the City and County of San Francisco.

(Testimony of Harry F. Walsh.)

Q. You reside in this city? A. I do.

Q. How long have you been occupying the position you have mentioned?

A. Going on 11 years; 10 years past.

Q. Do you know the defendants here, Poole and Murphy? A. Murphy, I do.

Q. Where did you first see those men?

A. Where did I first see Murphy?

Q. Yes.

A. At 30 Waverly Place, in Chinatown.

Q. In Chinatown, San Francisco?

A. Yes, sir; in the back room with a Chinese.

Q. State how you came to be there, and what you did when you were on [15] the premises and how you came to find him?

A. It was through arresting Chinese for violating the State Poison Law, smoking opium; we would always ask them where they bought their opium, we always wanted to get at the head of it, and we would—

Mr. PRICE.—Just a moment. We object to that, if your Honor please, as calling for hearsay.

The COURT.—Yes.

Mr. SELVAGE.—Q. State what you did.

A. We entered there, under a search warrant, to search the premises for opium.

Q. And did you go to this building? A. I did.

Q. How many rooms were there on the floor that you went to?

A. There was a store or a room or office, with tongued and grooved boards, back from the front of

(Testimony of Harry F. Walsh.)

the store, with two rooms in back of this little office, and a kitchen in back of that.

Q. That is No. 30 Waverly Place?

A. 30 Waverly Place.

Q. And it is in the City and County of San Francisco? A. Yes, sir.

Q. And in the State and Northern District of California? A. Yes, sir.

Q. How did you find the doors of the rooms?

A. There was one door open, and the office was open. You could go into the kitchen, there was no door there. While I was searching there, myself and Officer Stevens, we came across these rooms. I tried to open one door twice, it was closed and locked; I walked back to the kitchen and Officer Stevens then knocked on the door and asked for admittance; he knocked two or three times, I don't remember which it was, but it was twice anyhow—

Mr. PRICE.—Q. Are you reading from a memorandum, Officer Walsh?

A. No, sir, I am not. These are papers that I found there.

Q. Well, are you reading from them?

A. No, sir, I am not; I [16] can put them down any place.

Mr. SELVAGE.—Q. State whether or not you broke in the door.

A. Officer Stevens, after asking for admittance from all present and was refused, and the Chinamen would not open the door he kicked it in.

Q. Who did you find there?

(Testimony of Harry F. Walsh.)

A. He called me and said, "There is a white man in the room, with a Chinaman there. It was Murphy.

Q. How large a room was that?

A. It was a room, I should judge, about 8 by 8.

Q. What furniture, if any, was in it?

A. There was a bunk, such as the Chinese use, set up on horses or boards, with a mattress and clothes on top of it.

Q. Was it a regular Chinese bed? A. Yes, sir.

Q. Who else besides the defendant Murphy was there?

A. Chang Kow, a Chinese, one of the partners in the store.

Q. Did you have any conversation after you broke into the room? A. Yes, sir.

Q. What conversation did you have?

A. The partner was talking first to Officer Stevens and then—

Mr. PRICE.—We object to that, your Honor, let the witness tell what he knows himself and not what Officer Stevens said.

The COURT.—Q. You heard it? A. Yes, sir.

The COURT.—Proceed.

A. (Continuing.) He was talking to the Chinese and Murphy about who threw the papers on the floor; these were the papers and the keys. There was another set of keys but the Chinese got them back since. He asked them who owned the papers, and they both denied the ownership of the papers and the keys. He said to me, "Harry, I found these papers on the floor, and the keys, they look like white men's

(Testimony of Harry F. Walsh.)

paper, and there are keys here, I suppose one belongs to [17] the Chinese, the white man denies ownership of these papers.”

Mr. DANFORD.—If your Honor please, we object to this testimony unless it is shown that the defendants and each of them were there.

The COURT.—It is shown that one was there.

Mr. DANFORD.—Will your Honor hold that that will bind both defendants?

The COURT.—It binds one; you cannot exclude testimony that binds one simply because it does not bind the other.

Mr. SELVAGE.—Q. Proceed with your statement.

A. He said, “He denies ownership of the papers, Harry. I found a paper corresponding to those on the floor in the white man’s pocket; this is the paper here, the first one.”

Q. Which paper is that?

A. Officer Stevens signed his name on the paper. We found all these papers there.

Q. You found this paper in whose pocket?

A. Officer Stevens found it in Murphy’s pocket.

Q. And you say it was similar to the others you found on the floor?

A. That Officer Stevens picked up off the floor.

Q. This notation on the outside was not on the paper, was it? A. No, sir, it was not.

Q. It is simply a notation of the officer to identify the paper, is it?

A. I don’t know who wrote that on there. Ste-

(Testimony of Harry F. Walsh.)

vens' name is signed on the paper that he found in Murphy's pocket; he wrote it in ink.

Mr. SELVAGE.—At this time I offer, for the purpose of identification, a deposit slip on the Bank of Salt Lake City, Utah, Walker Brothers, Bankers.

Mr. PRICE.—I do not believe it is proper to read it into the record at this time. We have no objection to its being marked. [18]

Mr. SELVAGE.—I am not reading it; I am simply identifying it and offering it for identification at this time. I ask to have it marked "United States Exhibit 1 for Identification."

(The document was here marked "U. S. Exhibit No. 1 for Identification.)

Q. Did you find other similar papers under the bed or in the room?

A. Officer Stevens picked up all the papers and had them in his hand when I came in the room.

Q. When you came in the room? A. Yes, sir.

Q. Did he have a conversation with the defendants, in your presence, regarding these papers?

A. He did, sir.

Q. State what else occurred there after these papers, after this paper was found in the pocket of Mr. Murphy?

A. We were asking him if they were not his papers, and he said no, they were not; we asked the Chinese whose papers they were and he said they belonged to the man who went out. Then we asked Murphy what he was doing in there with the Chinese in the room, closed up in the room, and the room

(Testimony of Harry F. Walsh.)

locked, and he told us he came in to play a Chinese Lottery. I said, "They don't play Chinese lottery in here, at least they never did to my knowledge and I have been in Chinatown a good many years off and on"; and he said, "Well, this man places the ticket for me and I go and play it."

Q. Was there any further conversation had in the room?

A. We talked about the papers. I do not remember all of the conversation. We asked him, the last thing before we left the room if these were his papers, and he denied ownership of the papers or the keys.

Q. Are these two bunches of keys the keys you found in the room? A. Yes, sir.

Q. Where were they with reference to the men?
[19]

A. When I first seen them Officer Stevens had them in his hand.

Mr. SELVAGE.—I will introduce these keys for identification and ask that the two bunches be fastened together and marked Government's Exhibit 2 for Identification.

(The keys were here marked "U. S. Exhibit 2 for Identification.")

Q. All of the papers you have here were found there in the room, were they? A. Yes, sir.

Q. State whether or not they were fastened together or how they were.

A. They were scattered. There were a few under the bunk and a few on the floor. Stevens was pick-

(Testimony of Harry F. Walsh.)

ing up the last few under the bunk when I came in the room.

Mr. SELVAGE.—I will offer these in evidence for identification and ask that they be marked Government's Exhibit 3 for Identification as the papers which were found in the room with the defendants Chang Kow and Murphy.

(The papers were here marked "U. S. Exhibit No. 3 for Identification.")

Q. Where did you take them from the room?

A. From the room we took them to a restaurant. They requested something to eat, both of them, and when they had their supper we took them over to Turk and Taylor, to a rooming-house.

Q. To Turk and Taylor, to a rooming-house?

A. Yes, sir.

Q. What was the name of the house?

A. It is at Turk and Taylor; I forget the name of it now. It used to be called the Riverside but it was changed to the Lenox, I think it is the Lenox. It is up over the Poppy Cafe, on the southeast corner.

Q. Did you go to any room? A. We did.

Q. What room?

A. Up on the third or fourth floor; I think it was 509—or 409—I think it was 509.

Q. Room 509 in the Lenox?

A. I think it is the Lenox. I have [20] forgotten the number of the room.

Q. Did Mr. Murphy say anything as to whose room it was? A. He said that he roomed there.

Q. From there where did you take them?

(Testimony of Harry F. Walsh.)

A. From there we took them down to the Ferry Building, in an office off from the Ferry Building, a Customs House office, the night inspector's office.

Q. When you were in the room, 509, if that is the room in the Lenox, did you see any person there other than the two defendants?

A. I seen a lady in there.

Q. Do you know what her name was?

A. Agnes Benier.

Mr. DANFORD.—Just a moment. During all the time you have testified to were both defendants present? You just answered both defendants.

A. Not Mr. Poole, but the Chinese and Murphy.

Q. Just one of these defendants?

A. Murphy.

Mr. SELVAGE.—Q. What, if anything, did Mr. Murphy say upon entering the room?

A. We did the first speaking; we asked the woman if he roomed there and she said he did not.

Q. What next was said?

A. We asked her if he had been up there and she said yes; we turned to him and said, "We thought you roomed here," and he said, "I do; I am up here pretty often." She said, "He only came up here two or three times and the last time he came he stayed all night."

Q. Was there anything else said by Murphy that you heard as to why he was arrested?

A. We told him, when we first took him out that we thought he was either a smuggler of Chinese or of opium; and the woman asked him what he was

(Testimony of Harry F. Walsh.)

arrested for and he said, "These officers say they are taking me down for smuggling," smuggling Chinese or opium; I don't know what it is he said.

Q. You say that after you left there you went to the Ferry Building? A. Yes, sir. [21]

Q. How long did you remain there?

A. We remained there I think an hour and a half or two hours. The night inspector, or captain of the watch, was making his rounds and we did not know when he would come back and so we telephoned out to Inspector Head's house and told him we had two men we would like him to take charge of and he came down and took charge of them.

Q. Did you say anything to him about arresting him for opium smuggling prior to this expression he made to Agnes Benier?

A. We were talking to him and telling him that we thought he was a Chinese smuggler or an opium smuggler or something; I believe I did, sir, to the best of my knowledge.

Q. After you reached the Ferry Building did you have any further conversation with him or with the Chinese?

A. We tried to get the Chinese—we asked the Chinese if these were not the white man's papers and keys, but he no sabbeed at all.

Mr. PRICE.—Were the defendants present at that time?

A. Murphy was present.

Q. Mr. Poole was not present? A. No, sir.

Mr. SALVAGE.—Q. What did you find in the possession of the Chinaman in the room where you

(Testimony of Harry F. Walsh.)

first arrested them?

Mr. CAMPBELL.—If your Honor please, we object to that as assuming something not in evidence; it has not been proven that there was anything found in the possession of the Chinaman.

The COURT.—If there was not anything found the witness can say so.

A. Officer Stevens searched the Chinese; I don't know what he found on the Chinese.

Mr. SELVAGE.—Q. Did you see any money there? A. I did.

Q. What money did you see? A. I seen \$1395.

Q. What character of money was it?

A. It was in bills, U. S. Government bills. [22]

Q. Do you know what the denominations were, whether large or small?

A. They were one-hundred dollar bills and some smaller.

Q. Who had the money when you first saw it?

A. Officer Stevens had it in his hand; he told me he took it off the Chinese.

Q. Did he tell you, in their presence, that he took it off the Chinese? A. Yes, sir.

Q. What was done with that money?

A. It was turned over to the Government officials, Mr. Tidwell and Mr. Wardell.

Q. Did either of them say anything about who that money belonged to or what it was for?

A. They would not tell us.

Q. They would not tell you? A. No, sir.

Q. Did you ask them? A. I did.

(Testimony of Harry F. Walsh.)

Q. There are some notations on some of these papers that have been introduced for identification here, "U. S. Exhibit No. 3"; I will ask you whether or not the notations that are here upon these papers were upon them at the time that you found them?

A. Yes, sir; they were. Those are the papers. There was a note-book there also amongst them.

Q. I will ask you whether or not this book is in the same condition now as it was when you found it. Just examine it and state.

A. Yes, sir, it appears to be in the same condition as when we found it.

Q. I will ask you whether or not after you reached the prison with Mr. Murphy he made any statement to you about these papers?

A. The next day he did.

Q. On the next day he did? A. Yes, sir.

Q. What did he say on the next day?

A. We asked him about the ownership of the papers and the keys; we were talking there for some time; I left Officer Stevens in conversation with him once when I went and tried to get him out in the corridor for a walk and they said they would let him out later when the misdemeanor prisoners [23] were locked up; then I went back there and then he admitted, in the presence of Officer Stevens and myself, the ownership of the keys and the papers, and that he threw them on the floor.

Q. Did he say anything as to the notations on the papers?

A. He said he was just figuring up certain things

(Testimony of Harry F. Walsh.)

out of his own mind, and he was figuring other things, just while sitting there waiting for the Chinaman to play his lottery ticket.

Q. Did he say anything about whether he had given that money to the Chinese, or the Chinese had given it to him? A. He did not.

Q. Did you have any further conversation with Mr. Murphy?

A. That was all, after that day in the prison.

Cross-examination.

Mr. DANFORD.—Q. At the time that you visited the room, and after leaving the Chinese quarters, is it not a fact that Mr. Murphy made the remark to you, "I don't know what you have arrested me for, but I know you better take us to the station that I might talk to any attorney"? A. He did.

Q. And is it not a fact that he did not say anything about being arrested for opium or for smuggling, or for anything of the kind?

A. He did up in the corridor of the Hall; I distinctly heard him when the woman asked him what was the matter.

Q. You said he made a remark that he was there for the purpose of buying a Chinese lottery ticket?

A. He told us he was in there to play Chinese lottery tickets, yes, sir.

Q. Did he show you anything like that or did you see anything like that on him (showing)?

A. I did not, and we did not find anything like that on him.

(Testimony of Harry F. Walsh.)

Q. The papers that you have testified concerning, and which are marked for identification, were on the floor when you went in there? [24]

A. Part of them were on the floor and part of them in Officer Steven's hands, and the keys were in his hands.

Q. Did you find any of them at any time on the persons of the defendants, or either of them?

A. Officer Stevens informed me that he found one paper—

Q. (Intg.) Just a moment.

Mr. SELVAGE.—Q. In the presence of the defendant? A. In the presence of the defendant.

Mr. DANFORD.—That is all.

Redirect Examination.

Mr. SELVAGE.—Q. Do you know where Officer Stevens is?

A. Yes, sir. Sergeant O'Brien got a telegram from him this morning; he is coming down from Wilbur Springs.

Q. He will be here later?

A. I don't know when he will get in. The Sergeant got a telegram from him this morning that he will leave right away.

Testimony of Joseph Head, for the Government.

JOSEPH HEAD, called for the United States, sworn.

Mr. SELVAGE.—Q. What is your full name?

A. Joseph Head.

Q. Where do you reside, Mr. Head?

(Testimony of Joseph Head.)

A. 210 Ashbury Street, San Francisco.

Q. What official position, if any, do you hold with the United States Government?

A. Inspector of Customs.

Q. How long have you been occupying that position? A. Nearly 18 years.

Q. What designation do you have as to your office?

A. Captain of Inspectors.

Q. Do you know the defendants here, Mr. Poole and Mr. Murphy?

A. I know Mr. Murphy as having met him on September 17th. [25]

Q. Where did you meet him on September 17th?

A. I met him first on the evening of September 16th.

Q. Whereabouts?

A. At the Ferry assembly-room.

Q. Did you have any conversation with him?

A. I had a conversation the following day in Mr. Tidwell's office.

Q. Go on and state what that conversation was.

A. The conversation was in regard to where he roomed and where his trunks or baggage were.

Q. Did you have any conversation with him about coming from El Paso, Texas, to San Francisco?

A. I think he was asked that question but he denied he came from there.

Q. Where did he say he roomed?

A. At the Porter Hotel; he did not say he roomed any place, but he said he spent the previous night at that hotel.

(Testimony of Joseph Head.)

Q. That is the night before his arrest?

A. Yes, sir.

Q. What hotel is that, or where is it located? Is it the same as the Lenox? Is it the same hotel that was known as the Lenox before that?

A. I could not say.

Q. Where is it located?

A. It is either on Turk or on Eddy Street.

Q. Did you go there to see whether he was stopping there, or not? A. No, sir.

Q. Did he make any other statement to you?

A. He said he had a trunk which he had shipped from Helena, Montana, to some place in Kentucky.

Q. How did he come to mention it?

A. Upon questioning him.

Q. You asked him questions? A. Yes, sir.

Q. State whether or not you afterwards found any trunks here in the city that had been used for transporting opium?

Mr. PRICE.—One moment. We object to the question as [26] calling for the conclusion of the witness. The question is leading.

Mr. DANFORD.—He should state the facts, your Honor.

Mr. SELVAGE.—I will withdraw the question.

Q. Did you find any trunks in the city here after that, after having that conversation? A. Yes, sir.

Mr. DANFORD.—We object to that unless it is shown that it is connected with the defendants.

Mr. SELVAGE.—We will connect it with the defendants all right.

(Testimony of Joseph Head.)

The COURT.—I suppose they must connect them with the defendants or else the testimony will be stricken out.

Mr. DANFORD.—I suppose there are thousands of trunks in warehouses here in the city.

Mr. SELVAGE.—Well, this trunk was not recovered from a warehouse.

Mr. PRICE.—Never mind testifying, Mr. Selvage. You are not testifying now. Let the witness state the facts.

The COURT.—Gentlemen, just address your objections to the Court and I will pass upon them as best I can. This objection is overruled.

Mr. SELVAGE.—Q. Go on and state what course you pursued in finding these trunks, and where you found them, and so forth.

A. Do you wish the incidents leading up to the finding of them?

Q. Well, not necessarily; state whatever you did yourself and not what anybody said to you. State what you did and how you found them, and where you found the trunks. You can tell how you located them and where you found them?

A. I received from the custody of Mr. Walsh a certain registered mail receipt dated September 15, 1913, numbered 10052. From information secured from the postoffice this receipt for registered [27] mail was sent from 68 Duboce Avenue. I obtained a search-warrant for 68 Duboce Avenue and went out there and met Mr. Blum, two of them there are two brothers, and asked them regarding this receipt.

(Testimony of Joseph Head.)

Q. You need not state what they told you. Just go on and state what you learned and what you did.

A. From information received at this place I located three trunks at 59 and 61 Duboce Avenue.

Q. What was the character of the trunks, the general appearance of them?

A. Two of the trunks were usual trunks and one was a trunk that was rather exceptional in appearance, that is, it was a long trunk.

Q. Are the trunks here in the corridor, do you know? A. Yes, sir.

Q. Captain Head, state whether or not this is one of the trunks you found (referring to a long trunk).

A. Yes, sir.

Q. Just examine it and see whether it is in the same condition now as it was when you found it.

A. Yes, sir.

Q. Examine the inside and see whether or not it is in the same condition as when you found it.

Mr. McKINLEY.—Let the record show, Mr. Reporter, that the witness is opening the trunk with a key on the bunch of keys marked “U. S. Exhibit No. 2 for Identification.”

Mr. SELVAGE.—Q. I will ask you first, Captain Head, what is the character of the lock on this trunk?

A. Corbin.

Q. Is it a common or an unusual key that you opened that trunk with?

A. The lock and key are very unusual for trunks.

Q. State whether or not the trunk is now in the same condition it was in when you found it.

(Testimony of Joseph Head.)

A. The only difference is that this was suspended on this strap. [28]

Q. That is, the little case inside was suspended on the strap? A. Yes, sir.

Q. Were these comforts or quilts or whatever you call them, in the trunk at the time? A. Yes, sir.

Q. State whether or not there were any stains upon the quilts at the time you found them, or on the comforts.

A. This comforter, I cut a sample from it containing a stain similar to this, and which I gave to a chemist.

Q. Was there any great quantity of it?

A. It was just scattered through the trunk, on the sides, and at different places.

Q. The witness is now shown certain mechanical devices or arrangements in the center of the trunk; it divides the trunk into two separate devices, the devices sliding up and down and having thumbscrews to hold them in place; I will ask you whether or not the trunk was in the same condition and those devices are in the same condition now as when you found the trunk? A. Yes, sir.

Q. State whether or not you found any key to unlock the little case, this little case about 18 inches long and 10 inches deep and 12 inches wide that is found within the trunk here.

A. I did not try the keys on the trunk.

Q. You did not try a key on this little case?

A. No, sir.

Q. Among the keys that you found, state whether

(Testimony of Joseph Head.)

or not you tested them in the locks of the other trunks that were found?

A. No, sir, I did not test the keys; I can only swear to this one key that I opened the trunk with.

Q. Did you examine the other trunks?

A. Yes, sir.

Mr. SELVAGE.—Now, I will have another trunk brought in.

Mr. DANFORD.—Will counsel for the Government consent to the defendants taking a specimen of the stain? [29]

Mr. SELVAGE.—Certainly.

The WITNESS.—I will state, Mr. Selvage, that I only obtained stains—

Mr. PRICE.—We object to any voluntary statement.

Mr. SELVAGE.—Q. I desire you to proceed and state whatever you did about the trunk or about the stains.

A. We took stains from the sides of the trunk as well as from this piece here.

Q. You found stains upon the sides of the trunk?

A. Yes, sir.

Q. As well as upon the quilts? A. Yes, sir.

Q. State whether or not the stains were solid material, the same as this, that could be picked off.

A. Yes, sir.

Q. The same material? A. Yes, sir.

Mr. PRICE.—We would like to leave this little piece here at present, if your Honor please.

Mr. SELVAGE.—Q. I call the witness' attention

(Testimony of Joseph Head.)

to this other trunk. But before doing that I think I will have this long trunk introduced in evidence at this time as "United States Exhibit No. 4 in Evidence."

Mr. DANFORD.—We object to it, if your Honor please, upon the ground that there has not been anything shown by the Government connecting either one of these defendants with this trunk.

The COURT.—Except the key. That is about the only thing.

Mr. DANFORD.—There is nothing showing they had any possession of it, or any right, title or possession in it.

Mr. SELVAGE.—We will introduce it now for identification and we will introduce it in evidence a little later on.

Mr. DANFORD.—All right.

(The trunk was here marked "U. S. Exhibit No. 4 for Identification.")

Mr. SELVAGE.—Q. I will ask you whether or not the trunk [30] here which I will ask to have introduced for identification and marked U. S. Exhibit No. 5, was also found by you?

A. Yes, sir.

(The next trunk was here marked "U. S. Exhibit No. 5 for Identification.")

Q. Where did you find it?

A. At the same place, 59-61 Duboce Avenue.

Q. Did you open that trunk also? A. Yes, sir.

Q. State whether or not there were any stains at the time you opened it. A. Yes, sir.

(Testimony of Joseph Head.)

Q. State whether or not this trunk is now in the condition it was in at the time you found it.

Mr. DANFORD.—Just a moment. I want to ask the jury, through the Court, if the jury can see all of this trunk. It is material that they should see it.

Mr. SELVAGE.—I think they may examine the trunks; I think it would be well for them to examine them to their fullest desire.

Mr. DANFORD.—Yes, we want them to see the interior of the trunks, especially this long one.

Mr. SELVAGE.—Q. Answer the question please, Captain. A. Yes, sir, it is.

Q. And was this clothing in here? A. Yes, sir.

Q. State whether or not these pillows were in the trunk. A. Yes, sir.

Q. And the quilts or comforters, whatever you would call them? A. Yes, sir.

Q. I call the attention of the witness that I used one of the keys upon that ring in opening the trunk; state whether or not you ever opened the trunk with one of these keys. [31]

A. Another Government officer tried the keys.

Q. Was it in your presence? A. No, sir.

Mr. SELVAGE.—Let the record show that the key from the same ring opens this trunk “U. S. Exhibit No. 5.”

Mr. DANFORD.—We object to that. It has not been shown that this witness used this key on this trunk. Are we to conclude something from what this witness has said, or are we to try a number of keys and pick out a certain one.

(Testimony of Joseph Head.)

Mr. SELVAGE.—The purpose is to show that one of the keys on this bunch of keys, or this key-ring, was used to open the trunk. Mr. Murphy admitted that these were his keys. Also it is to demonstrate here in the courtroom that that key will open the trunk.

Mr. DANFORD.—The objection is withdrawn.

Mr. SELVAGE.—Q. Did you find another trunk?

A. Yes, sir.

Q. Where did you find it?

A. 59-61 Duboce Avenue.

Mr. SELVAGE.—I will have it brought in. Let the record show that the trunk now produced was unlocked by one of the keys found upon the ring admitted by Mr. Murphy to have been his keys, and in the presence of the jury.

Mr. DANFORD.—We object to that way of putting it in. Mr. Murphy has not been on the stand yet and has not admitted anything.

Mr. SELVAGE.—He admitted it to this witness.

Mr. DANFORD.—Then let the record show that the witness said that Mr. Murphy admitted it.

Mr. SELVAGE.—That is all right.

Q. State whether or not this is the trunk that you found. A. Yes, sir.

Q. And the same quilts or blankets or comforters, whatever they may be, were found in the trunk?

A. Yes, sir.

Q. And were these clothes also found there?

A. Yes, sir.

Q. And the ropes? A. Yes, sir. [32]

(Testimony of Joseph Head.)

Q. How about the shoes?

A. They were found in the trunk.

Q. And the tools that are in here were also found in it, were they? A. Yes, sir.

Mr. SELVAGE.—I will offer this trunk for identification, if your Honor please, and ask to have it marked U. S. Exhibit No. 6.

(The trunk was here marked “U. S. Exhibit No. 6 for Identification.”)

Q. I understand that you did not find any more trunks yourself personally? A. No, sir.

Q. State whether or not in your examination of the defendants or their effects you found any papers or memoranda?

A. In the trunk No. 5 I found this package of opium labels.

Mr. CAMPBELL.—We object to that, if your Honor please, as calling for the conclusion of the witness, whether they were opium labels.

The COURT.—Well, let that part of it go out. He found that package.

Mr. SELVAGE.—Q. You found this package, did you? A. Yes, sir.

Q. Is it in the same condition now, that is, as to quantity of labels? A. Yes, sir.

Q. It is a package of labels of some kind, is it not?

A. It has lettering on it.

Q. It has lettering on it showing what it is?

A. Yes, sir.

Mr. SELVAGE.—I want to call the attention of the jury to the fact that these labels have upon them,

(Testimony of Joseph Head.)

“Lai Chan, Prepared Opium.”

Mr. PRICE.—Have you offered them in evidence?

Mr. SELVAGE.—No.

Mr. PRICE.—We ask that that statement of the District Attorney be stricken from the record and the jury instructed to disregard it. [33]

The COURT.—Let it go out.

Mr. SELVAGE.—I offer it in evidence, your Honor.

Mr. DANFORD.—In evidence, or for identification?

The COURT.—It will take the same course as the others.

Mr. SELVAGE.—Yes, it will take the same course as the others. We ask to have it marked “U. S. Exhibit No. 7 for Identification.”

(The labels were here marked “U.S. Exhibit No. 7 for Identification.”)

Q. Where did you find those?

A. In the trunk number 5.

Q. Did you find any other documents or any other papers?

A. Do you mean in the trunks or at other places?

Q. Either from the defendants or from the trunks, or from any other source, state whether you found any documents.

A. In the search of the place that Mr. Walsh took me to, where he had taken Mr. Murphy into custody, I found this paper rolled in a wad under the bed.

Mr. SELVAGE.—At this time I will introduce in evidence this paper mentioned by the witness and

(Testimony of Joseph Head.)

which is endorsed "Walker Brothers, Bankers, Salt Lake City," and ask to have it marked U. S. Exhibit No. 8 for identification.

(The paper was here marked "U. S. Exhibit No. 8 for Identification.")

Q. You have some other papers there?

A. These are the check numbers of two trunks, which I received from Charles Dixon.

Q. Where did you find this?

A. Mr. Dixon gave me that as the check numbers for trunks delivered at the Thames Hotel, on September 11th.

Mr. SELVAGE.—I will ask that this be introduced, the same as the others for identification.

(The document was here marked "U. S. Exhibit No. 9 for Identification.")

Q. And what is this?

A. This is a card given me by Mr. Roberts in regard to the moving of a trunk to the Alcazar Hotel.
[34]

Mr. PRICE.—If your Honor please, we object to this. This seems to be a memorandum which somebody else has given to the witness.

Mr. SELVAGE.—We will connect them with the defendants.

Mr. DANFORD.—Then you put them in on the avowal that you will connect it?

Mr. SELVAGE.—Yes, otherwise we could not introduce these things.

(The document was here marked "U. S. Exhibit No. 10 for Identification.")

Q. What is this?

(Testimony of Joseph Head.)

A. This a card given me by Mr. Roberts on the arrival of the trunk.

Mr. SELVAGE.—I offer this in the same manner.

(The card was here marked “U. S. Exhibit No. 11 for Identification.”)

Q. What is this?

A. In the search of the place at 30 Waverly Place, where Mr. Murphy was found, I took some Chinese books; one of them is this book.

Mr. SELVAGE.—We offer this in the same way.

(The document was here marked “U. S. Exhibit No. 12 for Identification.”)

Q. State whether or not you examined the hotel register of the Hotel Thames.

A. Yes, sir, I examined it.

Q. Do you know the handwriting of the defendant Murphy? A. Fairly well.

Q. State whether or not you saw any handwriting upon that register that was similar to his and that you recognized as his? A. Yes, sir.

Q. What was the name you found?

A. A. J. Spencer.

Q. Have you the record here?

A. I think it is here.

Q. Do you know where the record is?

A. I gave it to Mr. Smith to give to Miss Nelson this morning.

Q. State whether or not you found in the book that was taken from Mr. Murphy an item regarding a railway ticket. [35] A. Yes, sir.

Q. Will you call attention to it?

Mr. PRICE.—If your Honor please, we object to

(Testimony of Joseph Head.)

this line of examination as leading the witness.

Mr. DANFORD.—We would not interpose this objection at this time, your Honor, except that there has been much of it.

The COURT.—The objection is overruled.

A. It is amongst those papers.

Mr. SELVAGE.—Q. I call your attention to “United States Exhibit No. 3 for Identification” and ask you as to the ticket I just mentioned?

A. I do not see it amongst these.

Q. State whether or not you saw it amongst any of those others that you have passed over to me.

A. No, it is not here.

Q. Then I will withdraw that question for the present time. We have the Register here now. I will return to that other matter a little later. State whether or not this is the Register that you found the name upon. A. Yes, sir.

Q. Which is the name that you have reference to?

A. The name of A. J. Spencer at the top of the page.

Q. On what date?

A. Thursday, September 11th.

Q. Of this year?

A. Of this year, 1913, yes, sir.

Mr. SELVAGE.—We will introduce this leaf for identification and ask to have it marked U. S. Exhibit No. 13 for Identification.

(The document was here marked “U. S. Exhibit No. 13 for Identification.”)

Q. State whether or not it was in this book at the time?

(Testimony of Joseph Head.)

A. Yes, sir. I saw them cut it out, and I was present when it was cut out.

The COURT.—What hotel is that?

A. The Hotel Thames.

Q. Where is that? Is it in this city?

A. Yes, sir. [36]

Mr. SELVAGE.—Q. Mr. Head, I will call your attention to some documents here, apparently tickets, and ask you if you have ever seen these before, and if you know where they came from?

A. I have seen this registered mail receipt.

Q. The registered mail receipt? A. Yes, sir.

Q. That is on the outside, is it? A. Yes, sir.

Q. Is this the receipt you spoke of a little while ago in your testimony? A. No, sir

Q. From what do you recognize this?

A. From the number and the date.

Q. What is the date? A. July 14, 1913.

Q. Where did you see that?

A. It was given to me by Mr. Walsh as one of the papers found at 30 Waverly Place.

Mr. DANFORD.—That is objected to as immaterial, irrelevant and incompetent; he did not see it in connection with these defendants. If they have someone who got it from them it must be introduced through that witness.

The COURT.—That is true.

Mr. SELVAGE.—I think the objection is good as to that part of it, and the part of the answer where the witness said it was handed to him as having been taken from the defendant, that part can be stricken out.

(Testimony of Joseph Head.)

Q. But it was handed to you by Mr. Walsh was it?

A. Yes, sir.

Q. Did you ever see any of these tickets before; that is, in connection with the case?

A. I saw them but without making any examination of them very closely.

Q. You made no examination of them yourself?

A. No, sir.

Cross-examination.

Mr. DANFORD.—Q. Mr. Head, have you seen anything in these trunks that were in them when you first saw them? A. I think so. [37]

Q. Are you certain there is not something that was in them when you first saw them and is not in them now, or is in them now?

A. There is a package of these labels that I took out. There are a number of articles in the trunk that I have not enumerated or spoken of.

Q. But you say that all that you saw in them when you first saw the trunks is still in them?

A. I think so.

Q. Now, please come down and examine this trunk; do you see anything in the trunk, anything like tin, or tin-cans of any kind? A. No, sir.

Q. Did you at any time ever see anything of that kind in this trunk?

A. No, sir, not in this trunk, referring to "Exhibit 4."

Q. Now, referring to "Exhibit No. 5," please examine this trunk and see if you find in it now everything that you first saw in it. You remember every-

(Testimony of Joseph Head.)

thing you saw in it, do you? A. Pretty well.

Q. Just look at it now and see if you find everything there that was there when you first saw it.

A. Just as I see them now, they were all there.

Q. This is one of the tin-cans that you saw?

A. Yes, sir.

Q. Is it in the same condition now as it was when you first saw it?

A. Except that I made a hole in the top of it.

Q. Did you have an order of court or any other order, to make a hole in the top of it? A. No, sir.

Q. Is it customary for you or for those working under you, to get what purports to be evidence and then change that evidence?

Mr. SELVAGE.—To that we object upon the ground that it is not proper cross-examination; it is calling for a custom.

Mr. DANFORD.—It is a part of what they found as an exhibit.

The COURT.—The objection is sustained. The question is what did he do?

Mr. DANFORD.—What did you do with reference to this?

The COURT.—Q. You punched a hold in it to find out what [38] was in it, didn't you?

A. Yes, sir, that is all.

Mr. DANFORD.—Q. Did you do the same thing with this? A. Yes, sir.

Q. Did you ascertain what was in both of these?

A. Yes, sir.

Q. What did you ascertain was in both of them?

(Testimony of Joseph Head.)

A. Some kind of jelly, supposed to be.

Q. Did you taste it? A. No, sir.

Q. Did you ever taste anything like it before.

Mr. SELVAGE.—He said he did not taste it.

Mr. DANFORD.—If your Honor please, counsel has turned this witness over for cross-examination and I object to counsel interfering with the cross-examination.

Q. Do you say now, Mr. Head, that you do not know what you found in these cans?

A. The contents are the same as when I found them.

Q. But they were a jelly substance?

A. Yes, sir.

Q. I ask you whether they were a syrup substance rather than a jelly substance?

A. I should say they were a jelly substance.

Q. Have you had any analysis made of the contents of these cans? A. I have not.

Q. Did you cause any analysis to be made by anybody else? A. I have not.

Q. Did anybody working under you, with your knowledge and consent do so?

A. Not to my knowledge.

Q. So far as you know there has been no part of any of this taken out for the purposes of analysis; is that correct?

A. I took a small part out on a knife-blade, that is all that has been taken out.

Q. On a knife-blade? A. Yes, sir.

(Testimony of Joseph Head.)

Q. Was it in the form of a syrup when you took it out?

A. It was in this form which I have stated already.

Q. Would it pour? A. No, sir. [39]

Q. It *runned not* pour? A. No, sir.

Q. Would it cake, if you cut it, or would it run back as if it were merely a syrup?

A. It was more of a jelly-like substance.

Q. Would it cake, if you cut it?

A. That is a question I cannot answer.

Q. You saw it? A. Yes, sir.

Q. You run a blade through it? A. Into it.

Q. And you lifted some out? A. Yes, sir.

Q. Don't you know from what you did see that it does not contain opium, or any derivative thereof?

A. Yes, sir.

Q. That it does not? A. Yes, sir.

Q. You affirm that it does not contain opium, and did not contain opium, when you opened it, and it does not contain opium now?

A. To the best of my knowledge.

Q. That it does not? A. Yes, sir.

Q. Now, having thus affirmed that you know that it did not contain opium, did you find anything in connection with it there that to your personal knowledge did contain opium?

A. You mean in connection with the cans or with the trunk, "Exhibit 5"?

A. I found stains on the trunk which, to the best of my knowledge are opium stains.

Q. Stains? A. Yes, sir.

(Testimony of Joseph Head.)

Q. But you found nothing in bulk, or in any commercial quantity? A. No, sir.

Q. Did you have an analysis made of the stains?

A. Yes, sir.

Q. Where is the analysis?

A. It is in the possession of the chemist.

Q. Where is the chemist?

A. He is outside in the corridor.

Q. What is his name? A. Mr. Dawson.

Q. Did he give you the result of his analysis, with reference to the several stains?

A. He has not given me any. [40]

Q. Do you say that to the best of your knowledge the stains are opium stains, without a chemical analysis?

A. Mr. Dawson did not report to me the result of his investigations.

Mr. DANFORD.—I object to that, your Honor, and ask that it be stricken out.

The COURT.—Answer the question.

A. Yes, sir.

Mr. DANFORD.—Q. Have you ever consumed or used opium for your personal use?

A. I have tested it by burning it with a match.

Q. But not by chemical process? A. No, sir.

Q. And you never took any of it into your system?

A. No, sir.

Q. You are stating that the stains which you found—some of them— were stains from opium; that is based upon your judgment without having any personal knowledge of what the chemical composition

(Testimony of Joseph Head.)

of opium is or of what opium is from personal use?

A. Yes, sir.

Q. You had in your possession at one time all of these trunks, had you? A. Yes, sir.

Q. Did you find in them these (referring to "United States Exhibit 7 for Identification")?

A. Yes, sir.

Q. You know what they are, do you?

A. They are what I have seen for over 17 years in the Customs-house.

Q. They are a paper substance; do you know where this paper came from, or was made? A. No, sir.

Q. Don't you know, as a matter of fact, that that paper was made in this country?

A. I do not know where it was made.

Q. From your 17 years' experience in seeing that kind of paper do you not know that it is paper made in this country?

A. I do not know where it is made. [41]

Q. You do not know that this paper was made in any other country? A. No, sir.

Q. What are these papers used for generally, from your 17 years of experience?

A. They are similar to the ones on the tins in that trunk.

Q. They are similar to some of the paper on the cans in "U. S. Exhibit 5 for Identification." Have you ever seen bundles of paper like that together, in your experience as a customs official? A. Yes, sir.

Q. And coming from foreign ports, of course?

A. Yes, sir.

(Testimony of Joseph Head.)

Q. Do you know what those that you saw and resembling this exhibit are used for?

A. It would only be a presumption on my part.

Mr. SELVAGE.—Mr. Head, if you know what they are used for, tell him what they are used for.

Mr. DANFORD.—Q. Answer it yes or no.

A. Yes, sir.

Q. They are used for labeling cans, or something else? A. Containing opium.

Q. When cans contain opium these are used for labelling purposes? A. Yes, sir.

Q. Did you ever see any of these cans that did contain opium when they came into your possession, in your official capacity?

A. Well, those are rather, I might say crude examples of genuine opium tins.

Q. In other words, they are not like the things that come in on genuine opium cans, and that you do know from examining them, although you do not understand the Chinese language? A. Yes, sir.

Redirect Examination.

Mr. SELVAGE.—Q. In your 17 years in the service of the Government, have you seen cans with material put up like this before? A. Yes, sir.

Q. What are they used for?

A. Containing opium.

Q. Have you seen cans with material in like this before? A. Yes, sir.

Q. What are they used for?

A. Containing opium. [42]

Q. Do these contain opium?

(Testimony of Joseph Head.)

A. Do you refer to the two you hold in your hands?

Q. Yes. A. No, sir, they do not.

Q. I asked you if you ever saw cans with material like this before? A. Yes, sir.

Q. What are the cans used for in this form?

Mr. PRICE.—We submit that the question has been asked and answered.

Mr. McKINLEY.—With this material in them?

Mr. DANFORD.—And he said it is not opium?

A. They are used for decoys or dummies.

Mr. SELVAGE.—Q. Do you know whether or not, in the sale of opium, they are slipped in sometimes?

A. We have found them in Chinatown amongst genuine opium tins.

Q. And this is an ordinary thing in your business—that is, in seeing these in your business?

A. Yes, sir.

Q. Now, as regards these labels, Mr. Head, what are they used for?

Mr. DANFORD.—That is objected to. It has been asked and answered so far as he knows.

Mr. SELVAGE.—But that was on cross-examination.

The COURT.—The objection is overruled.

A. Used on the outside of opium tins.

Mr. SELVAGE.—Q. Are they to dress up, after the label has been injured? A. Yes, sir.

Q. Have you had any experience with opium that has been brought in from Mexico across the border, as to what condition the cans are in after they get here? A. Yes, sir.

(Testimony of Joseph Head.)

Q. What condition?

A. Sometimes badly bruised, with the labels partly erased or torn off.

Q. And those labels are used for dressing them up afterwards, are they? A. Yes, sir. [43]

Recross-examination.

Mr. DANFORD.—Q. Mr. Head, you replied that you have seen cans like that used for decoy cans?

A. Yes, sir.

Q. And in the course of your experience, and presuming in your official capacity you have had some experience with reference to Government officials charged with having decoy cans in their possession, cans of axle-grease?

Mr. SELVAGE.—I object to that as not proper cross-examination. That has nothing to do with this case, as to what may have been found on some other person who is charged with crime.

The COURT.—You inquired about the decoy cans; I presume he might prosecute that inquiry.

Mr. SELVAGE.—Very well. I will withdraw the objection if that is the theory of it. A. Yes, sir.

Mr. DANFORD.—Q. Then that is not the only kind of cans containing substances that is not opium, and in your experience not the only kind of cans containing a substance which purported to be opium?

A. No, sir.

Q. Have you not seen 30 or 40 cans at one time purporting to contain opium but really containing axle-grease?

Mr. SELVAGE.—I will ask the witness to confine

(Testimony of Joseph Head.)

his answer to that question to his own knowledge.

Mr. PRICE.—We object to the District Attorney instructing the witness, and we assign it as error on the part of the District Attorney.

The COURT.—Do you mean for counsel to suggest that the witness answer only what he knows of his own knowledge,—do you mean that that is error?

Mr. PRICE.—He was instructing the witness not to answer the question in a direct form yes or no.

[44]

The COURT.—I did not so understand him. I thought he was suggesting that the witness be not permitted to answer except those things that he knew of his own knowledge. The question is, did you see 30 cans of axle-grease masquerading as opium?

A. I could not say the number; I have seen a number of them but I cannot say it was 30 or 40.

Mr. SELVAGE.—Q. I will ask you whether or not amongst other things in this trunk you found any samples of opium, or samples that were submitted to the chemist?

A. I found a small lump 'of opium in an envelope. That was not submitted to the chemist.

Q. How large? A. About the size of a walnut.

Q. Did you know the substance yourself?

A. To the best of my knowledge and belief it was opium.

Q. To whom did you turn that over?

A. To Mr. Tidwell; I think I have it here.

Q. You have it? A. Yes, sir.

Q. Do you remember which trunk this was found

(Testimony of Joseph Head.)

in? A. Trunk No. 5.

Mr. SELVAGE.—I offer this in evidence as an exhibit and ask to have it marked United States Exhibit No. 14 for Identification. (The article was here marked “U. S. Exhibit No. 14 for Identification.”)

Mr. CAMPBELL.—I would like to ask just one question: Q. Mr. Head, you are positive, as much as you can be, that this is the writing of Murphy on this hotel register, the name “Spencer”? A. Yes, sir.

Q. And you are certain of that?

A. To the best of my knowledge and belief.

Q. Just as certain of that as of any other portion of your testimony relative to his writing?

A. No, I could not answer that. [45]

Q. You are not as certain of this writing of his as you are as to the rest of his writing?

A. I thought you said in regard to my testimony in other matters?

Q. I mean with reference to this writing.

The COURT.—That is the only thing he has testified to about his writing, that he is familiar with it.

Mr. CAMPBELL.—Q. You are as certain of this handwriting as you are of any other writing of Murphy’s?

A. To the best of my knowledge and belief.

Q. What was the date that this sheet was taken from the register, if you remember?

A. Either on the 17th or 18th of September.

Mr. PRICE.—Just one more question, if your Honor please—

The COURT.—I must insist that one counsel cross-

(Testimony of Fred West.)

examine the witness; he cannot be passed from hand to hand.

Mr. DANFORD.—That is all, your Honor.

Testimony of Fred West, for the Government.

FRED WEST, called for the United States, sworn.

Mr. SELVAGE.—Q. What is your name?

A. Fred West.

Q. What is your business?

A. Chemist, in the Treasury Department.

Q. State whether or not you, in connection with any others, took samples of stains from clothing from these trunks that are here in evidence.

A. Yes, sir, I recognize the trunks and the contents.

Q. Did you make any analysis of the stains that you took, or the material?

A. Yes, sir, I made unofficial analysis. I am a chemist, serving under a chief chemist; I made my first analysis and reported to him and he made the official analysis and reported it.

Q. Where did you take the samples from?

A. I took samples from those trunks, in the office of Special Agent Tidwell.

Q. What part of the trunks did you take the samples from?

A. Some of the samples were taken by cutting out pieces of paper [46] with an adherent brown substance, others were taken by cutting out sections of those comforters and still others were taken from pieces of overalls.

Q. Who was the chemist to whom you submitted

(Testimony of Fred West.)

your report? A. Dr. Dawson.

Q. Did you make an analysis of all the different pieces or samples that you took?

A. The samples were taken from four trunks and put in four envelopes marked Exhibits "A," "B," "C," and "D," and each envelope was supposed to constitute a representative sample of the contents of that trunk and those were the materials upon which I worked.

Q. And you made the analysis of each?

A. I made some of each, yes, sir.

Q. And reported to Dawson?

A. I reported to Dr. Dawson.

Mr. SELVAGE.—You may cross-examine.

The COURT.—Q. What did you find the substance was? A. I found that the substance was opium.

Mr. SELVAGE.—I was going to get that from Dr. Dawson.

The COURT.—I think you had better get it from the man who made the examination, who made the analysis.

Mr. SELVAGE.—Q. You know what the samples were? A. Yes, sir.

Q. What were they? A. Opium.

Q. What kind of opium?

A. They were smoking opium; that is, what we call smoking opium is the soft extract of opium sold under the name of smoking opium.

Mr. SELVAGE.—You may cross-examine.

Cross-examination.

Mr. DANFORD.—Q. You have handled a great

(Testimony of Fred West.)

deal of smoking opium, have you?

A. The examination of smoking opium is an analysis which— [47]

Mr. DANFORD.—Just a moment. If your Honor please, that is not responsive.

The COURT.—Can you answer the question?

Mr. DANFORD.—The Reporter will read the question to you.

(Question repeated by the Reporter.)

A. No, not a great deal.

Q. How often have you had occasion to analyze, if you did analyze opium?

A. Well, six times within a year.

Q. And was it always in bulk or stains such as these? A. No.

Q. Was it always in bulk alone, excepting this time? A. It was in cans.

Q. Then when you examined or analyzed opium in a can you took it from what was in the form of commercial quantities?

A. I would not understand your meaning of commercial quantity; we have a unit for opium.

Q. For instance, what you get from a mere stain would not be as pronounced as what you would get from a can containing a commercial quantity, would it? A. Yes, yes, of course.

Q. It would be as pronounced? A. Yes, sir.

Q. Then, if I let you extract from under my nail, and it were reasonably long, a portion of opium, and you analyzed it, you would get the same results, would you, as you would get from what you would take out

(Testimony of Fred West.)

of a can with a spoon?

A. Well, it would be a case of how much your finger-nail would hold.

Q. If it would hold, for instance, a dram?

A. A dram of opium would be sufficient for about ten analyses, and if you made one analysis ten times from that quantity of opium you would feel you were justified in saying it was opium, in my opinion.

Q. What else did you find in your analysis of the stains besides [48] opium?

A. The question is a little too fine in calling for stains. They were not stains; they were adherent masses.

Q. I believe you said in your direct testimony they were adherent masses; you also found names which you analyzed, did you not?

A. The materials I analyzed were not stains, they were adherent masses. I would not consider a stain of opium sufficient to work upon; I would want a larger sample.

Q. Now, from your knowledge of opium in cans which you did examine in other instances, would you say that there could be a leakage from a can which would form a crust or adherent substance that could be the subject of analysis?

A. Why, certainly, enough to leak out of a can could be analyzed.

Q. What happens to opium when it leaks out of a can and strikes the open air?

A. Are you asking the question as of opium or what is known as smoking opium?

(Testimony of Fred West.)

Q. You testified concerning smoking opium, did you not? A. I did.

Q. What happens to a substance called smoking opium when it leaks out of a can and when it strikes the air?

A. When it strikes the air there would be a natural evaporation of the water contents, the extract would become slightly harder and if allowed to stay for several days would become brittle through the absence of the water.

Q. Would it not lose some of its constituent elements? A. No.

Q. It would not lose any? A. No.

Q. What are the constituent elements of smoking opium?

A. The constituent elements of smoking opium would be first, what would be regarded as its active principle, that is, what would give it its power to produce narcosis upon something; that is the alkaloid present. [49]

Q. What would be the other?

A. The other would be the water present, and finally what is termed in chemistry or pharmacy as the vegetable extractive.

Q. That is two, and the water is three; each one of those has a chemical effect when joined together to constitute smoking opium; each one of those constituent elements has a certain chemical effect and when joined together they constitute smoking opium; is that correct?

A. No, not in my opinion.

(Testimony of Fred West.)

Q. Does smoking opium consist of the three elements which you have enumerated? A. Yes, sir.

Q. Then is it not necessary that there be a chemical action to join those three elements, in order to constitute smoking opium? A. Positively no.

Q. Then you could have smoking opium without any one of those three elements?

A. I did not say that.

Q. Well, what do you say?

A. I say I do not agree with you when you state it is necessary to have the alkaloids and water and vegetable extracted, and I think I can substantiate what I mean.

Q. We will perhaps give you a chance. Opium you say consists of three specific elements, which you have enumerated? A. Smoking opium.

Q. Are those three elements indispensable to that bulk which constitute smoking opium?

A. To the bulk?

Q. Yes.

A. They are indispensable to the bulk, yes, sir.

Q. And with any one of those three elements extracted, the narcotic element, for instance, or the element that produces narcosis, it would not be opium, would it? A. Yes, yes, it would.

Q. Could you extract any one of those three elements and still have it opium. A. Yes, sir. [50]

Q. And still have opium?

A. And still have smoking opium?

Q. And still have smoking opium? Can the prop-

(Testimony of Fred West.)

erty be put together called smoking opium without water?

A. Well, that would involve a commercial definition.

Q. Give it.

A. A smoking opium is an aqueous extract of opium of a certain consistency. When it is smoked it is taken up on the end of a wire and is placed over a flame and cooked; in the cooking process it bubbles and swells and gives off gases and water; after the water is off it is in a condition to be consumed by fire, in the process of combustion.

Q. Could combustion begin if the water were not there?

A. Why it would be more rapid if the water were not there.

Q. Would it have the same narcotic effect?

A. Yes, sir.

Q. What purpose does the water serve?

A. It serves the purpose of a vehicle in adjusting the consistency so it can be handled on the end of a wire.

Q. Without the water being there, it could not be conveyed, could it? A. Yes, sir.

Q. How?

A. You could take a pinch of it up and roll it between your fingers and put it there.

Q. But it could not be used for smoking purposes unless there was the means of conveyance there, could it?

A. Yes, you could take and chip it off with a ham-

(Testimony of Fred West.)

mer, or anything you wanted.

Q. You found other stains there; did you analyze them?

A. I have reported that the contents of those four envelopes constituted the samples.

Q. What other chemical substances did you find in the analyses?

A. I did not look for any other.

Q. You did not look for any other? A. No.

Q. Don't you know as a chemist, that the substances that you did analyze could be combined with other chemical substances which would [51] make them usable solely for medicinal purposes and not for smoking at all? A. I do not.

Q. What experience have you had as a chemist?

A. Before I was in my present position I was chemist in the Board of Health, San Francisco.

Q. What education had you in your preparation for chemistry?

A. I studied in the College of Pharmacy, San Francisco. My Professor in chemistry was Professor Frank T. Green, Special Toxicologist, and he specialized with the students.

Q. What College of Pharmacy was it?

A. The San Francisco College of Pharmacy; there is only one.

Q. And you graduated? A. Yes, sir.

Q. And you don't know that the other stains which you analyzed could when combined with what you *said contained* form a product other than opium used for smoking purposes?

(Testimony of Fred West.)

Mr. SELVAGE.—I submit that he answered the question, and he answered directly.

Mr. DANFORD.—It is put in a different form now.

Mr. SELVAGE.—Well, let the witness understand then whether it is a repetition of the other question or whether you are summing up what he formerly testified to. That is the only matter I wish to call attention to.

Mr. DANFORD.—We are willing to stand on his previous answer, if your Honor please. That is all.

Redirect Examination.

Mr. SELVAGE.—Q. You say you do not know of anything that could be introduced into the substance that you analyzed that could make it in any form for medicinal purposes?

A. Well, from my knowledge as a chemist and as a pharmacist I turned over in my mind the things that would be liable to be put there for medicinal purposes and I cannot think of anything that could be. Opium has a well defined action and it is usually used by itself for its narcotic effect; it stands up alone as that kind of a [52] drug; what they could or would combine with it I cannot think.

Mr. DANFORD.—Q. You are familiar with what is known as gum opium, *have* you not?

A. Yes, sir, I have handled it, and I have seen it.

Q. Don't you know from what you have handled of it and from what you have seen, and as an expert, that it can be purchased in commercial quantities?

(Testimony of Fred West.)

A. It can, subject to certain restrictions of the law.

Q. What are the restrictions?

A. The restrictions of the law are that those things sold must be registered.

Q. Conceded; you do not mean there is any restriction with reference to the revenue laws of the United States, do you?

A. I was not referring to the United States laws; I was referring to—

Q. (Intg.) You mean like any other medicine sold in a pharmacy?

A. Oh, no; that was not the question as I understood it. Like any other medicine sold in a pharmacy would not be like the commercial sale of gum opium, because you could not buy it.

Q. In short, you do not refer to any revenue laws of the United States?

A. No, I am referring to the custom of wholesale druggists and retail pharmacists with regard to registering poisons.

Q. But it could be purchased in commercial quantities all over the Country, could it not?

A. I think not. I think it could not be purchased in a commercial quantity if a commercial quantity would be what I would judge to be a shipment of it, received from a large firm.

Q. Can you not go in the City of San Francisco now and buy a lb. of it?

A. By virtue of the fact that I am a registered pharmacist in the State of California, I can.

(Testimony of Fred West.)

Q. And could not somebody else go down, with proper credentials, and buy a lb. of it?

A. No; if by proper credentials you refer to something else besides the fact that he is a registered pharmacist or a practicing physician, no. I judge that you are not a registered [53] pharmacist or a practicing physician, and if you went to any of the wholesale drug houses for a lb. of opium I think you could not buy it.

Q. You refer to gum opium?

A. Opium and gum-opium are synonymous.

Q. You could go down and buy 10 lbs. of it, could you not?

A. If I were engaged in the drug business and went down and asked for 10 lbs. of opium there would be an inquiry as to what I wanted to do with that quantity.

Q. Could you not go down to a drug-store in this city now and buy 10 lbs. of it, if they had it?

The COURT.—There is no occasion for any extreme heat, is there?

Mr. DANFORD.—This witness is parrying; it is very evident to me that he is.

The COURT.—Not at all; he is answering your questions straightforwardly.

A. I doubt if I could.

Q. Could you go down and buy a quantity of it?

A. I doubt if I could because I am not engaged in the retail drug business and I would have to show I had a legitimate reason for wanting it.

Q. What do you maintain would be necessary for

(Testimony of Fred West.)

me to do to go down and buy any quantity of it?

The COURT.—Oh, go hunt up the law and find out. Let us pass this.

Mr. DANFORD.—Q. After gum-opium has been cooked do you know what form it would take? Would it not take the form of smoking opium.

A. I don't understand what you mean by cooked unless you mean cooking in the process of smoking.

Q. After gum opium is cooked on the end of a pipe, or in any other [54] manner, would it not be a smoking opium?

A. I don't understand what you mean by the word cooked. There is culinary cooking and there is cooking on the end of a wire, what they call Yen Hoek. I could take a little pill of gum-opium, it is very pliable, it is a little thicker and heavier than dough, and put it on the end of a wire and cook it and get the physiological effect of smoking opium; I would not have smoking opium because I have already given you the definition of smoking opium as an aqueous extract of opium having certain consistency.

Q. Will you tell us as a chemist how Yen Shee is prepared for smoking?

A. That would be a difficult question. I know what Yen Shee is.

Q. If gum-opium is cooked in any manner that you do know of, would it constitute Yen Shee or smoking opium?

A. Yes or no will not answer the question for me.

Q. Well, do you whether *whether* it would or

(Testimony of Fred West.)

whether it would not?

A. I would like to tell the Judge and this gentleman who is cross-examining me—

Mr. DANFORD.—Your Honor, I do not appear to wish to be tedious or technical, but—

The COURT.—No, but you want the answer you want, and when you don't get the answer you want you get a little impatient about it.

The WITNESS.—I want to tell you something right now; there is a difference of opinion as to what Yen Shee is.

The COURT.—Yen Shee has been defined by the courts to be the residuum after opium has been smoked.

The WITNESS.—Yes, that is what Yen Shee is. Your question shows that you do not realize that. You are giving the term smoking-opium the name Yen Shee, which is not proper.

Mr. DANFORD.—Q. Now answer the question if gum-opium when cooked in any form you know of in which it can be cooked, would it [55] constitute Yen Shee or smoking-opium?

A. I would like to have the question repeated.

Q. I will repeat the question now and repeat it: If some opium is cooked in any manner known to you in which it could be cooked, will it not constitute smoking-opium.

A. No, it will not.

Q. What will it constitute?

A. It will constitute the residue from smoking-opium, which is commonly known as Yen Shee.

(Testimony of Fred West.)

Q. Gum-opium is not smoking-opium, is it?

A. No, but if you smoke it it is a smoking-opium; I have already tried to answer your first question so as to make it known that I have given you the definition of smoking-opium; and then when you use the words Yen Shee synonymously with it I want to correct your error.

Q. But you do admit that gum-opium when smoked constitutes smoking-opium?

A. No, I say gum-opium can be smoked.

Q. Gum-opium can be smoked? A. Certainly.

(A recess was here taken until 2 P. M.)

AFTERNOON SESSION.

Testimony of John H. Dawson, for the Government.

JOHN H. DAWSON, called for the United States, sworn.

Mr. SELVAGE.—Q. Your name is John H. Dawson? A. Yes, sir.

Q. Where do you reside?

A. 2489 Howard Street, in this city.

Q. What official position do you occupy with the United States Government, if any?

A. Special Examiner of Drugs, Chemicals and so forth, in the Customs-house.

Q. State whether or not there was submitted to you any specimens [56] that were taken from these trunks that we have here. A. Yes, sir.

Q. Did you make a chemical analysis of them?

A. Yes, sir.

Q. State what the result was.

A. Smoking opium.

(Testimony of John H. Dawson.)

Cross-examination.

Mr. DANFORD.—Q. Who gave you the specimens? A. Mr. West.

Q. Is he the chemist who testified this morning?

A. Yes, sir.

Q. Doctor, did you make the analysis from the beginning to the end of the operations yourself?

A. Yes, sir.

Q. You have handled a great deal of smoking opium in your time as a chemist, have you not?

A. Yes, sir.

Q. What does smoking opium consist of?

A. An aqueous extract of opium.

Q. What are its constituent parts, doctor?

A. It contains a great many alkaloids. Those are the principal constituents. They are the principal component parts of opium.

Q. What are the principal parts?

A. There are a great many different elements in it; some are morphine, barium, narcotinic acid; about 18 altogether.

Q. If several of the principal parts of it were extracted, it would not be opium, would it?

A. It would be nearer to opium than it would be to anything else, no matter what you took from it.

Q. Because of what?

A. It would compare with nothing else. If you took one alkaloid away it would still be opium minus that alkaloid.

Q. If you took most of them away?

A. Then you would not have much left.

(Testimony of John H. Dawson.)

Q. If you took most of the constituent parts away, without taking that away which produces narcosis, it would still be opium, would it?

A. It would not be the complete product called smoking opium. [57]

Q. Have you ever had occasion to examine powdered opium?

A. We never get powdered opium to examine in the Custom-houses. But as a pharmacist I have examined powdered opium just simply to know that it was powdered opium.

Q. And as a chemist if you examined powdered opium you would know what its constituent parts were? A. Yes, sir.

Q. Can you take powdered opium and by a mixture of water make smoking opium out of it?

A. It would be very close to it; it would not be smoking opium.

Q. If you took powdered opium and mixed it with water would it not make something very much identical with the specimens that were handed to you?

A. No, sir. Powdered opium is the gum-opium powdered. It contains a number of other things, sometimes vegetable matter, that smoking opium does not contain. Smoking opium as being the aqueous extract of gum-opium filtered before its evaporation produces smoking opium. It has a little ash in comparison with gum opium, which has considerable ash.

Q. You could take gum-opium and from it make smoking opium could you not?

(Testimony of John H. Dawson.)

A. They make smoking opium from gum-opium, yes.

Mr. SELVAGE.—Q. Did this specimen or these specimens that you analyzed possess all the properties of smoking opium?

A. All the characteristics and properties of smoking opium, yes, sir.

Mr. DANFORD.—Q. Did you find any evidence of any other chemicals? A. No, sir.

Q. Did you know of any stains in these exhibits?

A. I only know of what was handed to me; they were not stains.

Q. Those were the specimens only?

A. The specimens that I examined were sufficiently large and in sufficient amount to make the proper examination to identify smoking opium, and I identified them as smoking opium, every one. [58]

Q. But you don't know anything about the stains referred to in the exhibits except in so far as the specimens handed to you are concerned?

A. I heard nothing about any stains, only what I heard you say.

Testimony of Raphael Manzo, for the Government.

RAPHAEL MANZO, *call* for the United States, sworn.

(HERMAN A. KELLUM, sworn to act as Interpreter.)

Mr. SELVAGE.—Q. What is your name?

A. Raphael Manzo.

Q. Where do you reside?

A. Nogales, Arizona.

(Testimony of Raphael Manzo.)

Q. What is your business or occupation?

A. Manager of the Nogales, Sonora Bank.

Q. How long have you been acting as manager of that bank? A. About two years.

Q. Do you know the defendant here, George Poole?

A. Not that gentleman. I know Mr. Moore.

Q. Do you know either of the defendants sitting here at the table?

A. The one on the other side, at the further end.

Mr. SELVAGE.—I will ask that the defendant stand up.

A. (Continuing.) It is the last gentleman.

Q. By what name do you know this man?

A. Moore.

Q. Do you know his first name?

A. George,—George, I guess.

Q. How did you become acquainted with him?

A. Because I had to give him four cases.

Q. Whereabouts were the four cases given to him?

A. In Nogales, at Sonora.

Q. What did those cases contain?

Mr. PRICE.—We object to this, your Honor, as immaterial, irrelevant and incompetent; any cases of any kind given to him in Nogales, Sonora, presuming that Sonora means the Republic of Old Mexico, [59] there is nothing laid in the indictment about any other place but El Paso, Colorado, and California; therefore this is incompetent, and immaterial and irrelevant.

The COURT.—The objection is overruled.

(Testimony of Raphael Manzo.)

Mr. DANFORD.—We note an exception.

A. He said they were clothes; I did not know.

Mr. SELVAGE.—Q. How did you come to have the business of delivering these goods to him?

A. In accordance with an order from an officer of the bank in the City of Juarez.

Mr. PRICE.—I object to it, your Honor, and on the same grounds ask to have it stricken out, for the very reason that what is now testified to took place in a foreign country. This indictment specifies and limits them to what took place in this country.

The COURT.—Oh, no, it does not. I don't know what the purpose of this testimony is, but I assume that it is to trace these things from the places from which it is averred in the indictment they were brought to San Francisco. You don't have to aver that they started in Paris or Trinidad, or anywhere else; that is a matter of defense.

Mr. PRICE.—We ought to know that so that we will know what we are obliged to defend.

The COURT.—You are obliged to defend from El Paso, Texas, or Trinidad, Colorado, or some other point of that sort.

Mr. PRICE.—And we are not obliged to defend as to what took place in Mexico?

The COURT.—No.

Mr. SELVAGE.—Q. Did you know what those cases contained? A. I never opened them.

Q. But without opening them, did you know what they contained?

Mr. DANFORD.—We object to that; he said he did not know. [60]

(Testimony of Raphael Manzo.)

The COURT.—No, he did not say that; he said he did not open them.

A. Without looking at them I could not tell, without looking at the interior.

Q. Answer the question, did you know?

A. They told me that it contained opium, but I did not see anything.

Q. Who told you? A. The Chinaman told me.

Mr. PRICE.—We move that that be stricken out as hearsay.

The COURT.—Let it go out.

Mr. SELVAGE.—Q. Did you have any conversation with Mr. George Moore at the time that he got these cases, as to what they contained?

A. No, no conversation with Moore at all regarding that subject.

Q. Did he have any order that he presented to you to get these cases?

Mr. PRICE.—If your Honor please, we submit that that has been asked and answered not once but twice; it only serves to take up time.

The COURT.—I think that is the first time that that question has been asked.

A. He had an order from the agency in the City of Juarez.

Mr. SELVAGE.—Q. State whether or not that order was from the same place from which you received the goods.

A. No, that did not come from the same place.

Q. Did the order describe what the contents of the goods were? A. No, only four cases.

(Testimony of Raphael Manzo.)

Q. Did you and Mr. Moore have any conversation about those cases?

A. No conversation, nor did I give them to him; a laborer gave them to him. I was in Arizona and I could not go into Sonora on account of the revolution.

Q. Where were these goods stored? [61]

A. They were in the bank, in a closed room?

Q. Do you know what the value of these cases were?

Mr. DANFORD.—I object to that as immaterial, irrelevant and incompetent. There is no identity of the cases connected with these defendants, or either of them.

The COURT.—The objection is overruled.

Mr. DANFORD.—We note an exception.

A. I thought they were worth about \$1,000, in American money.

Mr. SELVAGE.—Q. Each case?

A. Each case.

Q. How large were these cases?

A. A small square, a very small square.

Q. 2 feet square? A. Less.

Q. Less than 2 feet square? A. Yes, sir.

Q. By whom do you say they were consigned to your bank?

A. They came from the port of Manzanillo, Mexico, from the Agency in that city, from the Agency—from the bank in the City of Juarez.

Q. I understand that it is not unlawful to deal in opium in Mexico?

(Testimony of Raphael Manzo.)

A. No, it is not contraband there.

Mr. PRICE.—Just a moment. We object to that. The laws of Mexico would be the best evidence as to that.

The COURT.—An expert may testify to what the law is, if he knows.

Mr. DANFORD.—He has not shown himself to be an expert.

The COURT.—You can examine him and find out if he knows. I think we would get along faster if you gentlemen would dwell on the material things in this case and not trifles like that. Do you claim that opium is contraband in Mexico?

Mr. PRICE.—No, we do not make that claim.

Mr. DANFORD.—We agree with counsel but we contend that it has no place here. [62]

The COURT.—You can make your objection.

Mr. DANFORD.—We object to it as immaterial, irrelevant and incompetent.

The COURT.—The objection is overruled. The answer was given before the objection was made. You cannot sit here and listen to an answer and if it is not favorable to you then move to strike it out.

Mr. SELVAGE.—You may cross-examine.

Mr. DANFORD.—No questions.

Mr. PRICE.—Q. Just one question. What finally became of these cases you testified to as having been turned over to you? A. I don't know.

**Testimony of Guillermo McAlpine, for the
Government**

GUILLERMO McALPINE, called for the United States, sworn.

(Testimony given through the same Interpreter as the preceding witness.)

Mr. SELVAGE.—Q. Where do you reside?

A. I reside in Nogales, Sonora, Mexico.

Q. What is your occupation?

A. I am employed in the bank at Nogales, Sonora, Mexico.

Q. Do you know either of these defendants sitting here? Let them stand up.

A. I know the gentleman over there.

Q. What is his name?

A. I don't know his name.

Q. When did you first see him or become acquainted with him?

A. I remember him about four months ago going once to the bank.

Q. Do you know what his business was at the bank?

A. He went to the bank to secure some cases that were in Nogales, Sonora.

Q. Do you know what was in those cases?

A. We did not know what was in them because they were closed. [63]

Q. Did you know what character of goods you were receiving when you received them?

A. Nothing; they were closed cases that were destined for that place there at the order of the bank of the City of Juarez.

(Testimony of Guillermo McAlpine.)

Q. To whom were they to be delivered?

A. Whosoever would come there with an order from the bank of the City of Juarez.

Q. Who came with an order from the bank at the City of Juarez?

A. The gentleman there brought it once; the gentleman on that side brought it once (pointing).

Q. How far is Juarez from El Paso?

A. I don't know.

Q. About how far is Juarez from El Paso?

A. I don't know anything about the distance; I delivered the goods at Nogales, Mexico.

Q. Have you traveled over the road from Juarez to El Paso, Texas? A. No, never.

Q. How did this man receive the goods?

A. Closed.

Q. How did he take them over?

A. The Morso—the servant—employed there, went with the gentleman with the goods to deliver them there in Mexico.

Q. How did he take them away?

A. The boy gave them to this man closed.

Q. Will you kindly describe the cases or boxes?

A. It was about this size, bound with a packing-sack, and tied with rope.

Q. How large were they?

A. About this size (indicating).

Q. About 2 feet square?

A. They were longer than wide; they were not exactly square. A little more or less, probably a little less.

(Testimony of Guillermo McAlpine.)

Q. Do you know how many tins each one of these contained?

Mr. PRICE.—One moment. There is no evidence that these things contained tins.

The COURT.—No, there is not; if he does not know he will [64] probably say so.

A. I don't know, but judging from the people who went there, they might have contained about 100 or so.

Q. How many times did Mr.—did you know the man by the name of Poole, or Moore?

The COURT.—He said he did not know his name.

Mr. SELVAGE.—Oh, yes, that is right.

Q. How many times did he get goods of that character there?

A. All I remember is but one time.

Q. About what date *what* that? I will withdraw that question. Have you the receipt with you that he gave for that package or for the packages?

A. He gave the boy the receipt.

Q. Have you the receipt with you?

A. I have the receipt.

Q. I would like to see it, please.

A. This is it.

Q. Is the date of this receipt the date he got the goods from your bank?

A. I believe it is the same date.

Q. June 10th, 1913? A. That is the date.

Mr. SELVAGE.—I offer this in evidence as the receipt for the goods that were received by George Moore, the defendant here, with the boxes.

(Testimony of Guillermo McAlpine.)

(The document was here marked "United States Exhibit No. 15.")

Q. How many of these boxes were there?

A. Four delivered by us.

Q. Do you know the value of those boxes?

A. They varied in value; sometimes they had one value and sometimes another.

Q. About the value?

A. About \$1,000 or \$1,100.

Q. Did you not know when you were delivering the goods what it was? I don't ask you now if you saw them, but I ask you if you did not know from handling the goods what it was?

A. Only the cases. I knew they were cases that were at the disposition of the bank. [65]

Q. You handled other cases of that same character, did you not?

A. They received those on deposit and delivered them as they ordered them.

Q. Didn't you know what they contained?

Mr. PRICE.—We object to that, your Honor; the question has been asked and answered.

The COURT.—No, it has not been answered at all yet.

A. I did not know with certainty what they were, but in the orders which were given to me they were labeled "Amapol."

Q. What does that mean? A. I don't know.

Q. How is that spelled? A. "A-m-a-p-o-l."

Q. Did you not, and did not the officers of the bank

(Testimony of Guillermo McAlpine.)

know, so far as you know, that that was opium they were handling?

Mr. PRICE.—We object to that.

Mr. SELVAGE.—I will strike out the part relating to the officers and leave it just as to himself.

A. In the orders there was nothing but that one word.

The COURT.—Q. That does not answer the question: did you know yourself?

A. It did not concern me what was in them.

Q. Now, answer the question?

A. I did not know.

Q. Was that goods not referred to frequently by those who were handling it as opium?

Mr. CAMPBELL.—Your Honor, we desire to interpose an objection to this question as immaterial, irrelevant and incompetent and it would be absolutely hearsay and could not bind the defendants.

Mr. DANFORD.—And unwarrantedly leading.

The COURT.—Yes, I know that it is leading.

Mr. SELVAGE.—I have to ask leading questions to this witness.

Mr. DANFORD.—This witness has been frank about everything. [66]

The COURT.—He appears to be fairly frank; he says he does not know what these boxes contained.

Mr. SELVAGE.—I am asking him if they all did not refer to that as opium.

The COURT.—That would not bind this defendant unless the defendant also referred to them.

Mr. SELVAGE.—Q. Did you have any conversa-

(Testimony of Guillermo McAlpine.)

tion with this defendant when he got the goods?

A. No.

Q. Did he talk any to you, or to anybody in your hearing? A. No.

Q. How did you know that those cases were worth \$1,000 or \$1,100 each?

Mr. DANFORD.—I object to that, your Honor, as cross-examining his own witness.

The COURT.—Oh, yes, he can do that, if permitted. The objection is overruled.

A. The value was given to them by the Agency; they gave it.

Mr. SELVAGE.—Q. Did this Agency state to you why this box was so valuable, or these boxes were so valuable?

Mr. DANFORD.—That is objected to as immaterial, irrelevant and incompetent, and not stated in the presence of any of these defendants.

The COURT.—The objection is sustained.

Mr. SELVAGE.—Q. Do you know the reason why—

The COURT.—Q. Where did the box come from?

A. Manzanillo.

Q. Is Manzanillo a seaport? A. Yes, sir.

Q. And they came to you at Nogales en route to Juarez.

A. No, sir, they came to Nogales direct.

Q. On the way to Juarez?

A. No, sir, on the way to Guaymas.

Q. I thought they were at the disposition of the Bank of Juarez?

(Testimony of Guillermo McAlpine.)

A. They were at the disposition of the bank but they came that way. [67]

Q. I understand that, but they came to your bank at Nogales from Manzanillo, a seaport?

A. Yes, sir.

Q. To the order of the bank of Juarez?

A. Yes, sir.

Mr. SELVAGE.—Q. Do you know where these cases went to after they left your bank?

A. No, I do not know.

Q. Do you know how this defendant received them and how he took them away?

A. They were closed, and as they received them from the boy I know nothing about their disposition.

Q. In what place were they kept in the bank?

A. In a room in the bank.

Q. Was there any other commodity kept there with these boxes? A. The books of the bank.

Q. How is it that you came to store these boxes along with the books of the bank in a private room?

A. The boxes were very large, and we were unable to put them in the vaults of the bank.

Q. Was it on account of their value that they were kept there?

A. Also so that they would be safe there.

Q. Did you ever see boxes of that character opened there? A. There they never open boxes.

Q. Did you ever see them opened anywhere, any other place? A. At no other place.

Q. Did you ever see any of the tins that were in those boxes, outside of the boxes?

(Testimony of Guillermo McAlpine.)

Mr. PRICE.—Your Honor please, we object to that as assuming a fact not in evidence. It is not in evidence that these boxes contained tins.

The COURT.—The objection is sustained.

Mr. SELVAGE.—Q. Did you ever see any opium tins on the outside of these boxes, or in boxes of that character I should say? [68]

A. Yes, sir, I have seen them; I know them.

Q. Were there ever any packages of opium sent through the bank that were not encased in large boxes? A. Never sent outside of the boxes.

Q. Was opium, if any went through the bank, always contained in cases of that form.

Mr. PRICE.—The question is objectionable because it assumes that they are always in that form.

The COURT.—Strike out the word “always.”

A. I do not know anything about the character of the opium only that it was sent in cases marked, as I said before, “Amapol.”

Mr. SELVAGE.—Q. Do you know of any produce in Mexico by the name of Amapol?

A. There is only a flower that is called “Amapola.”

Q. Do you know whether or not opium in Mexico is called “Amapol”?

A. In Mexico opium is called opium.

Q. What is the flower that you just mentioned?

A. It is a flower about this size, with a little point in the center that is yellow, in the center; it is a red flower with a little yellow point in the center.

Q. It is a poppy?

(Testimony of Guillermo McAlpine.)

A. I don't know what poppy is except they use that California word; it is a scientific word in Spanish.

Mr. DANFORD.—I submit, if your Honor please, that this whole line of examination is immaterial, irrelevant and incompetent. I do not wish the Court to think, however, we are trying to shut anything out.

Mr. SELVAGE.—I think you may cross-examine.

Mr. DANFORD.—No cross-examination.

Testimony of J. E. Benton, for the Government.

J. E. BENTON, called for the United States, sworn. [69]

Mr. SELVAGE.—Q. Mr. Benton, where do you reside? A. El Paso, Texas.

Q. What is your business or occupation?

A. I am Paying Teller in the First National Bank.

Q. State whether or not you know either of these defendants here, Mr. Poole or Mr. Andrews.

A. I know Mr. Poole.

Q. You do not know the other gentleman?

A. No, sir; I don't think I do.

Q. Where did you know Mr. Poole first?

A. In El Paso.

Q. In what way did you become acquainted with him? A. Through transactions at the bank.

Q. Did you see him at the bank? A. Yes, sir.

Q. Go on and state the particular relations you had with him there at the bank.

A. On several occasions he had money telegraphed to him from California to the bank, a bank in Cali-

(Testimony of J. E. Benton.)

ifornia telegraphed us to pay him money, and I paid it to him.

Q. And you paid him the money? A. Yes, sir.

Q. Have you the orders, or have you the telegrams upon which you paid money, and the receipts you received from them?

A. I have carbon receipts; the original was returned to the bank ordering the money paid.

Q. You have the carbon receipts? A. Yes, sir.

Q. Have you any telegrams that were received by the bank? A. Yes, sir.

Q. I hand you a telegram here and ask you what that is?

A. It is a telegram from the San Joaquin Valley Bank of Stockton, California, in code, to pay George P. Olin, care Erwin & Co. \$300.

Q. From what bank?

A. The San Joaquin Valley Bank of Stockton, California.

Q. Who presented himself for that money? [70]

A. Well, I could not say. There was no one asked for the money in that name.

Q. Well, what happened in relation to that telegram, did you pay it on that telegram?

A. No, sir.

Q. Why not.

A. I had the telegram several days and a party came into the bank inquiring for money, saying they were expecting money from Stockton, California—

Q. Which party?

A. Mr. Poole; and I told him we had a telegram

(Testimony of J. E. Benton.)

from Stockton, California, but it was not to him; and I believe he went out and afterwards returned again and inquired with regard to this telegram, and I showed him the telegram and showed him that it was for George P. Olin. He said it evidently was for him but the name must have gotten balled up, I believe was his expression, in transit.

Q. Did you refuse to pay that on the ground that you did know him as Moore?

A. No, as George Poole.

Q. Did you receive any other telegram from the same bank? A. Yes, sir.

Q. What is that (handing)?

A. That is a telegram from the San Joaquin Valley Bank of Stockton, California, to pay George O. Poole some money.

Q. And how much is that?

A. Altogether, \$400.

Q. Did you pay that to him? A. Yes, sir.

Q. What was the date of it?

A. It is dated March 20th.

Q. Are both of them March 20th? A. No, sir.

Q. What is the other one? A. March 14.

Q. State whether or not you took any receipts for that money or any other money that you paid him.

A. Yes, sir, I did.

Q. Just show us in this book if you have the receipts. A. I have three receipts. [71]

Q. By whom are they signed?

A. They are carbon copies.

Q. By whom are they signed?

(Testimony of J. E. Benton.)

A. By George O. Poole.

Q. In his handwriting? A. Yes, sir.

Q. I suppose you want this book to take back with you intact, do you? A. It is a record of the bank.

Q. I would like to introduce them in evidence, with the privilege to the witness of withdrawing them, or I can pass them to the jury and let the jury see the signature.

Mr. PRICE.—We have no objection.

Mr. SELVAGE.—I will pass this around and show his signature. What is the aggregate of those?

A. I could not say off-hand, I think about \$600.00.

Mr. SELVAGE.—I will ask to read these telegrams into the record so that they will not need to be introduced.

Mr. PRICE.—We have no objection.

Mr. SELVAGE.—I will read this telegram into the record so that we will not have to introduce it.

“Received at 2-52, G S R 13, Stockton, Cal. March 14 First National Bank, El Paso. Abaco hummer Geo P. Olin, care Erwin Co. Talor Vermicule toniard. We remit. The San Joaquin Valley Bank. 5-08. P. M.”

Q. There is noted on here, which I suppose is an interpretation or translation of it, is it?

A. Yes, sir; that is what it is.

Q. “Pay to George P. Olin care Erwin Co. We remit, \$300.” The other is dated “Stockton, Cal. March 20, 1913. First National Bank, El Paso, Texas. Pay George O. Poole, care E. Erwin Co. \$100; also pay him the \$300, our cipher wire March

(Testimony of J. E. Benton.)

14 to George P. Olin, name incorrect, should be George O. Poole. We remit \$100 today. San Joaquin Valley Bank, 3-55 A. M." [72]

Mr. DANFORD.—If your Honor please, we move to strike out any reference there made to anything previous to the 1st day of May, 1913, the date alleged in the indictment.

The COURT.—The motion is denied.

Mr. DANFORD.—We note an exception.

Mr. SELVAGE.—“El Paso, Texas 3-21: 1913. Received of First National Bank of El Paso \$100 one hundred. Account telegraphing transfer from San Joaquin Valley Bank, California. Identified by none. George O. Poole.”

“El Paso, Texas, 3-21, 1913. Received of First National Bank of El Paso, three hundred dollars, \$300, account telegraphing transfer from San Joaquin Valley Bank, California.” Identified by none. George Poole.”

“El Paso, Texas, 3-25, 1913. Received of First National Bank of El Paso, two hundred \$200, account telegraphing transfer from San Joaquin Valley Bank. Identified by none. George O. Poole.”

Mr. DANFORD.—If 3-25-13 means March 25, 1913, we object to that upon the ground that it is several months prior to the date alleged in the indictment, namely, May 1st, 1913, and for that reason it is immaterial, irrelevant and incompetent.

The COURT.—The motion is denied.

Mr. DANFORD.—We note an exception.

Mr. SELVAGE.—You may cross-examine.

(Testimony of J. E. Benton.)

Cross-examination.

Mr. PRICE.—Q. This telegram of March 20th corrects the telegram of March 14th, does it not?

A. Yes, sir.

Q. The telegram of March 14th directing the payment of George P. Olin was an error?

A. That is the way I understood it, yes, sir.

Q. It should have been sent, "Pay to the order of George O. Poole"; [73] that is correct, is it?

A. That was my conception of it after I received the telegram of March 20th.

Q. And after that correction was made you paid the money to Mr. Poole? A. That is correct.

Q. You don't know anything further about the money after you paid it to Mr. Poole, do you?

A. No, sir.

Q. You don't know whether he went over to Juarez and bet it at the race-track, or what he did with it, do you? A. No, sir; I haven't any idea at all.

Q. What was the form in which the payment was made to Mr. Poole? Did you pay him in cash when he came there for the money or did you pay him by check, or how?

A. I could not positively say about that.

Q. Did you not give him a cashier's check on your bank? A. That may have been so.

Q. And did he not return from time to time and cash these cashier's checks which you gave him?

A. He may have done so.

Q. Did you know what Mr. Poole's business was?

A. No, sir.

(Testimony of J. E. Benton.)

Mr. SELVAGE.—Q. Did you see Mr. Poole subsequently to the time that you gave him this money?

A. Yes, sir.

Q. How long was he in and about El Paso after that? A. I could not say; I don't know.

Q. I mean how late after that did you see him?

A. I saw him on the street one day; it may have been a couple of months ago.

The COURT.—Q. Do you live in El Paso, Mr. Benton? A. Yes, sir.

Q. The City of Juarez is in Mexico?

A. Yes, sir.

Q. How far from El Paso?

A. The Rio Grande River divides the two.

Q. It is just across the river, is it?

A. Yes, sir. [74]

Q. And there is a bridge across? A. Yes, sir.

Testimony of Charles R. Miller, for the Government.

CHARLES R. MILLER, called for the United States, sworn.

Mr. SELVAGE.—Q. What is your name?

A. Charles R. Miller.

Q. Mr. Miller, where do you reside?

A. 1159 Clay Street.

Q. In this city? A. Yes, sir.

Q. What business or occupation do you follow?

A. At the present time I am Assistant General Baggage Agent of the Western Pacific Railway Company.

Q. I hand you three tickets or checks and ask you what those are?

(Testimony of Charles R. Miller.)

A. That is what is termed an excess baggage check. This is transportation passage for a passenger.

Q. Where is this transportation from?

A. It is shown by the stamp on the back; it is supposed to have been sold at Trinidad, Colorado, on September 8th, 1913, by the Denver & Rio Grande Railroad Company.

Q. Do you know what the tariff is between Trinidad, Colorado, and San Francisco?

A. I think the first-class fare is \$42, and the second class is \$35.

Q. State whether or not the passenger is required by your company to sign the ticket, the transportation ticket upon which he travels?

A. Yes, sir, it is customary for the passenger or the agent to have the passenger sign his name on what they call an interline ticket, from one foreign line to another.

Q. And is that one signed by the passenger?

A. It shows here to be "T. J. Moody."

Q. You have already stated the date?

A. Yes, sir, September 8th, 1913.

A. (Continuing.) That would indicate the date it was sold by the agent. [75]

Q. I will ask you to explain these excess baggage checks and what the characters upon the checks indicate.

A. An excess check is printed in three coupons; one is termed the string or strap-head of the check; one portion is the passenger's duplicate, which goes to the passenger, and there is an auditor's stub which

(Testimony of Charles R. Miller.)

the agent retains. The information is shown the same on each portion of the check. This check would indicate that there was baggage checked from Trinidad, Colorado, to San Francisco, via the Denver & Rio Grande Railroad to Salt Lake and the Western Pacific to San Francisco.

Q. Does it show the amount of the excess baggage and the expense of it?

A. It shows here a gross weight of 320 lbs.

Q. And how much excess would that be?

A. There is 150 lbs. freight allowance to each full ticket and 75 lbs. on each half ticket that would be 170 lbs.

Q. One hundred and seventy lbs. excess baggage. What would be the tariff upon the 170 lbs?

A. The excess baggage rates are based on 16 $\frac{2}{3}$ per cent of a first-class fare; it would be about \$7.40 per hundred from Trinidad, Colorado, to San Francisco.

Mr. SELVAGE.—I will introduce this in evidence and ask to have it marked U. S. Exhibit 16 for Identification.

(The document was here marked "U. S. Exhibit 16 for Identification.")

The WITNESS.—I might add this further in regard to this: this shows a collection of \$2.60 for excess of size.

Q. I was going to ask you to explain what that means.

A. The railroads since June 1, 1913, charge on baggage—any trunk or anything in excess of 45

(Testimony of Charles R. Miller.)

inches—at the rate of 5 lbs. for each additional inch; so this would indicate a trunk of 7 inches above 45 inches; that would be 35 lbs; 5 lbs. for each additional inch above the 45. [76]

Mr. SELVAGE.—I will introduce these in evidence for identification in the same way.

(The two documents were here marked “U. S. Exhibits 17 and 18 for Identification,” respectively).

Cross-examination.

Mr. PRICE.—Q. Any trunk then that would measure more than 45 cubic inches—

A. 45 inches.

Q. 45 cubic inches, that would be subject to excess baggage? A. 5 lbs. for each additional inch.

Q. 5 lbs. for each additional inch over the 45 inches? A. Yes, sir.

The COURT.—Q. Would that be cubic inches? Do you mean in length?

A. In length. The average trunk would run about 30 inches.

Q. Not cubic inches?

A. In any direction, height, length, width.

Q. Counsel was asking you about cubic inches?

A. Oh, no.

Q. It is 45 inches in any direction, either in length, breadth or thickness? A. That is the idea.

Mr. PRICE.—Q. And if it should be in excess in each of those measurements, or in any one, and particularly if it should be in excess in each of those dimensions, would a charge be made for each of them?

(Testimony of Charles R. Miller.)

A. Yes, sir, in either direction; if it be 45 inches square there would be the two directions, the width and the length.

Q. Mr. Miller, you don't know anything about what the baggage referred to by these checks contained?

A. No, I would be unable to identify the baggage.

Q. The usual excess baggage checks?

A. Yes, sir.

Q. It quite often happens that excess baggage is paid? [77]

A. Probably one trunk out of every 100 must have an excess check.

Q. Now, as to the number of passengers out of every 100, how many would probably pay excess baggage?

A. Well, nowadays I should think that there are only about one-half of the people who have any check baggage; they travel with suit-cases and as a rule they carry them with them.

Q. Referring to the people who travel usually with trunks, making a transcontinental trip, or making a trip from one place to another for the purpose of staying, people who do carry trunks, have you any idea as to the number of people?

A. One-half of them.

Q. Out of those who do carry baggage, how many would you say pay excess baggage?

A. Those who have actual baggage checks, it is about one in every one hundred pay for excess weight, about one or one and a half.

(Testimony of Charles R. Miller.)

Q. And that makes the excess baggage department quite a large department, does it not?

A. Well, no. Do you mean with reference to excess collections?

Q. Yes.

A. It requires very little extra work; while the ordinary check would be stamped, say in this case from Trinidad to San Francisco, that is all there would be to it; for the extra weight you have to show the weight, the excess rate, the number of tickets and the amount of collections.

Redirect Examination.

Mr. SELVAGE.—Q. State whether or not your attention was called to the excess baggage of George Poole, or George Moore here, along about in September—Murphy, I should say—along in September.

A. I have a recollection of one of the employees of the baggage-room, the general baggage office is upstairs on the second floor of the Ferry Building, the baggage room where we receive and deliver baggage [78] is down underneath; one of the employees in this room came up to our place on an errand and he stated that there were a couple of customs officers down there regarding some baggage, or a couple of trunks, with some dope in it; he jokingly made the remark, "It passed me" or "I didn't get it," or something of that kind.

Q. You need not state what was said, but simply whether your attention was called to it.

A. It was.

Mr. PRICE.—Q. Whose baggage was it that your

(Testimony of Charles R. Miller.)

attention was called to? A. There was no name.

Q. Then in answer to the question of Mr. Selvage, you said your attention was called to the baggage of Mr. Murphy, and you answered "yes," did you mean your attention had been called to the baggage of Mr. Murphy?

A. No, the baggage was not identified as being that of any particular owner.

Q. Then you do not know whose baggage it was that was referred to at that time?

A. I could not say.

Mr. PRICE.—We move to strike out all the testimony with reference to that baggage.

The COURT.—Let it go out.

Testimony of Joseph Head, Recalled for the United States.

Mr. SELVAGE.—Q. Mr. Head, I call your attention to one of the slips of paper that was introduced for identification and ask you whether or not you ever saw that particular piece of paper before or whether that was with those that you found?

A. Yes, sir.

Q. Where did you say you found this?

A. It was given me by Mr. Walsh at the ferry.

Q. In the presence of the defendant?

A. Yes, sir.

Q. Which defendant? A. Mr. Murphy.

Q. Was any statement made as to where he got it?

[79]

A. Mr. Murphy did not claim any ownership of these at the time.

(Testimony of Joseph Head.)

Q. I asked you if Mr. Stevens or Mr. Walsh states where they got it.

A. Oh, yes, that they got it at 30 Waverly Place.

Q. And that was right in the defendant's presence, was it? A. Yes, sir.

Mr. SELVAGE.—I now offer this in evidence; I will read it to the jury.

Mr. PRICE.—No objection.

Mr. SELVAGE.—“Deposited with Walker Brothers, Bankers, for credit, Salt Lake City, Utah.” Then there is the usual denominations, gold, silver, currency and so forth; the pencil writing upon it is what I wish to read. “Furg. 20, Yee Yet Ray 20. Odo ra 5 Trinidad 2055; Ejan 1-90; ticket to S F 44:20. Excess 17.02. Pullman 50 B O Baggage 10. Aced 85 Brushes 50. My draft 200.” Endorsed: “340.

150

190

40-8 inch

0230

540

25 Letter to San Antonio;

Advance to Frank;

5 “ “

Stockings; 20.55 ticket Trinidad:

Ticket and berth to —”

Have you studied this, Mr. Head? A. Yes, sir.

Q. I wish you would read it.

Mr. DANFORD.—If your Honor please, if counsel is willing to expediate matters, if counsel for the

(Testimony of Joseph Head.)

Government will state what the purpose of this is we might stipulate to it.

Mr. SELVAGE.—It is the price of these tickets from Trinidad to San Francisco, and the excess baggage that shows upon these tickets, and that shows in that notation just the same. It is simply the different items of expenditure, being fare and otherwise in his trip from El Paso via Trinidad to San Francisco. It is just to match these tickets; they are identical with the notations upon the tickets.

[80]

Mr. PRICE.—We object to that statement, if your Honor please.

Mr. SELVAGE.—You asked me to make that statement. You stated that that might be stipulated. If they want to stipulate to that, I am willing to stipulate to it.

Q. Just kindly read that writing from the top down.

A. "25 Letter to San Antonio. 250 advanced to Frank. 5 advanced to stockings. 20/55, ticket to Trinidad and berth to Albuquerque—

supposed to be Albuquerque.

125 advanced expense money.

expenses Charlie's help.

465."

Q. You also found this book, will you kindly examine that book and state whether there is an item there relating to Chang Kow?

A. The book contains the entry of Quon Fat Hong Company, and underneath the figure 30.

(Testimony of Joseph Head.)

Q. Do you know that company? A. Yes, sir.

Q. What company is it?

A. It is a Chinese firm at 30 Waverly Place, San Francisco.

Q. Do you know what their business is?

A. They have not any business that I know of, outside of the opium business.

Mr. SELVAGE.—That is all.

Mr. PRICE.—No cross-examination. Yes, one moment, Head, I want to ask you about a few matters, I want to ask you one or two questions.

Q. Mr. Head, you stated that the business of this Chinese firm was the opium business; do you know whether they have any other business, or not?

A. I don't know of it, if it exists, or did exist.

Q. And do you know that of your own knowledge?
[81].

A. There is no evidence in the store of any other merchandise to conduct any other business.

Q. Did you find any opium in there?

A. No, sir.

Q. Then how do you know that they are engaged in the opium business?

A. From a study of their records taken from their office.

Q. And you don't know anything about it from your own knowledge, and you have never seen any opium in there; is that correct?

A. I know of my own knowledge because I have taken the books and had them translated and saw the translation made by the Immigration Interpreters.

(Testimony of Joseph Head.)

Q. Book knowledge is the only knowledge you have, what you gained from the books; is that correct? A. That is correct.

Q. You never have seen any opium in the place, have you? A. No, sir.

Q. Did you ever see any cigars in there?

A. No, not any great amount.

Q. Have you see any cigars in there, Mr. Head?

A. I may have; I could not swear to that. I may have seen a small amount.

Q. Have you seen any tobacco?

A. I may have seen a small amount.

Q. Have you seen shoes in there?

A. My answer would be the same to that.

Q. You may have seen shoes in there?

A. I may have seen a small number.

Q. Have you seen rice in there? A. Yes, sir.

Q. Then, Mr. Head, why do you say they have no other business?

A. Because the quantities of these goods I have mentioned are not enough to conduct a business with; they are for their own use in the store.

Q. But they have a store and they are on shelves, are they not? A. No, sir. [82]

Q. Any shelves in there? A. Yes, sir.

Q. They might have had large quantities of stuff in there for all you know, cigars and tobacco and rice, at some time or another.

A. Not at the time I visited the store.

Q. But they may have had them at some time; they may have had them the day before?

(Testimony of Joseph Head.)

A. Yes, sir.

Redirect Examination.

Mr. SELVAGE.—Q. How long since you first visited that store, Mr. Head?

A. The evening of September 16.

Q. Just state to the jury what condition you found that store in, that is, about the size of it, and the rooms that were connected with it, and the amount of merchandise, if any, you found there.

A. Well, it may have a frontage of 10 or 12 feet and a depth of between 30 and 40. It is a small store. My impression of visiting the store, which has not changed on the other visits, is what we call in Chinatown circles as a dummy store.

Q. And you say they were in the business of opium, was there any other evidence that you had of it, other than what you have stated?

A. From a knowledge of information that other inspectors had given me regarding the place.

Q. Do you know what the general reputation is?

A. Since the evening of September 16th I do, but not before.

Q. What has it been? A. An opium place.

Testimony of Charles W. Dixon, for the Government.

CHARLES W. DIXON, called for the United States, sworn.

Mr. SELVAGE.—Q. Where do you live?

A. San Francisco, 230 Devisadero Street.

Q. What is your business?

A. Transfer and storage. [83]

Q. Do you know the defendants here, either one

(Testimony of Charles W. Dixon.)

of the defendants Mr. Pool or Mr. Andrews?

A. I don't believe I do.

Q. You don't recall their names at all?

A. No, sir.

Q. State whether or not you had ever transferred any baggage from the Western Pacific to a hotel for George Poole or for Andrews, or Murphy.

A. No, not that I know of by those names.

Q. Not by those names? A. No, sir.

Q. Did you upon any tickets or any check transfers?

A. Let me see,—yes, these checks went through my hands. My stamp is on the back of them.

Q. Would you know the baggage if you saw it?

A. No, I don't know exactly the baggage. A time before I was shown a trunk they showed me that trunk downstairs.

Q. That was one of the trunks?

A. They showed it to me downstairs, yes, sir.

Q. Was that one of the trunks that you handled?

A. That is hard for me to say because I don't handle the baggage; I run the office.

Q. State whether or not there was anything upon the trunk which you can identify it by as having been handled by you?

A. I seen a trunk like that downstairs that had one of my stickers on it. That is the one.

Q. That is the one?

A. That is one of my stickers.

Q. Do you know what you did with the trunk?

(Testimony of Charles W. Dixon.)

Q. Well, I did not handle the trunk; I don't handle the trunks.

Q. Who handled it?

A. One of my men handled it, I suppose; it went through the office.

Cross-examination.

Mr. DANFORD.—Q. So far as your personal knowledge is concerned, and your recollection, you don't identify these trunks at all you merely identify tickets? [84]

A. Those tickets have been through my hands.

Q. But you don't associate these trunks with these tickets, of your own knowledge?

A. No, I never can tell by the trunk what the ticket calls for.

Mr. SELVAGE.—Q. Except for the sticker on it.

A. Only the sticker.

Testimony of George Cassidy, for the Government.

GEORGE CASSIDY, called for the United States, sworn.

Mr. SELVAGE.—Q. Where do you reside?

A. 331 Hickory Avenue.

Q. In this city? A. Yes, sir.

Q. State whether or not you ever saw these checks before. A. No, sir.

Q. You never saw them personally? A. No, sir.

Q. Did you ever handle any baggage for Mr. Poole or Mr. Andrews or Mr. Murphy, some large trunks? A. I don't know the names.

Q. Do you know this trunk? A. Yes, sir.

Q. Did you ever handle it? A. Yes, sir.

(Testimony of George Cassidy.)

Q. Where did you handle it?

A. From the Western Pacific to the Thames Hotel.

Q. For whom did you handle it?

A. I don't quite remember the name of it.

Q. Do you recognize any of the men here?

A. I never saw the men; I saw in the office at the time they came in, but I was at the desk reading; I never saw the men.

Q. How many trunks did you take?

A. Two trunks.

Q. You recall the long one? A. Yes, sir.

Q. Would you recall any other?

A. No, sir; it was something of a square trunk, but I may have handled 200 or more of them, and I don't remember it. [85]

Q. Is this other one an unusual trunk?

A. Yes, sir.

Q. State with reference to its weight.

Q. It was rather weighty; I had to get some fellow to put it on the wagon.

Q. That was when it came into San Francisco?

A. Yes, sir.

Q. With reference to its weight, what would you say its weight was?

A. That is a hard thing to do, to guess the weight of a trunk; I should say maybe 190 lbs. or so.

Q. Do you recall who you delivered those trunks to? A. The Thames Hotel.

Q. Do you recall who you delivered them to at the Thames Hotel?

(Testimony of George Cassidy.)

A. Yes, the landlady's daughter; she let me in the room.

Q. Do you know her name?

A. I only know her first name.

Q. What is it? A. Marie.

Q. Do you recall the date of the delivery of the trunk?

A. I think it was about the 11th of September, on our books.

Cross-examination.

Mr. PRICE.—Q. You say you got these trunks where? A. From the Western Pacific.

Q. Have you ever seen a trunk like that before?

A. Well, I have seen them before, but I have never handled one like it before.

Q. Are you positive that is the trunk you handled?

A. Yes, sir.

Q. How do you identify it? Is there any particular mark on it?

A. Well, no, but by the shape of the trunk and the hardware, it is marked "hardware" on it.

Q. Do you know whether that is the trunk that was marked "hardware" that you handled, or whether it was somebody else's trunk that might have been marked "hardware"?

A. It was a trunk like that. [86]

Q. And you don't recall the men who came into the Thames Hotel there that day and asked you to haul some trunks for them?

A. They never came into the Thames Hotel to me.

Q. Where did they come to?

(Testimony of George Cassidy.)

A. They never spoke to me; to Mr. Dixon.

Q. And Mr. Dixon sent you after some trunks?

A. He did not send me then, it was later on.

Q. Well, in the usual way he gave you the order.

A. He gave me the checks to get the trunks.

Q. Then you went and delivered them to the landlady's daughter of the Thames Hotel?

A. Of the Thames Hotel.

Mr. SELVAGE.—Q. Do you recall the room number? A. I think 22.

Mr. PRICE.—Q. You state that this was room 22? A. Room 22, I believe; it was a corner room.

Q. Do you remember that from your own independent recollection or has your mind been refreshed on that subject to-day?

A. No, I remember it from the last time, when they came to see about the hauling of this baggage.

Q. And you remembered then it was room 22?

A. Room 22, a corner room.

Testimony of Marie Nelson, for the Government.

MARIE NELSON, called for the United States, sworn.

Mr. SELVAGE.—Q. Where do you reside?

A. San Francisco.

Q. What is the character of the building? Is it a hotel? A. Hotel, yes.

Q. Who is running the hotel? A. Mrs. Smith.

Q. Do you remember of a long trunk being delivered there? A. Yes. [87]

Q. Do you recognize the trunk? A. Yes.

Q. Where is it? A. Right there.

(Testimony of Marie Nelson.)

Q. You recognize that trunk? A. Yes, sir.

Q. That was in September last?

A. September 11th.

Q. Do you know the man who delivered it there—
I mean who owned it, who had it there? A. Yes.

Q. Do you see him here in the room? A. No.

Q. Do you know what his name is?

A. J. A. Spencer; he is registered by that name.

Q. Now, I will ask you whether or not he signed
the register in your hotel; did he sign the register
in your hotel? A. Yes.

Q. I call your attention to the name upon this list,
J. A. Spencer; is that correct? A. Yes, sir.

Q. Is that the name that he signed?

A. Yes, that is the name.

Q. I will ask you whether or not this gentleman
sitting over here at the table, the smooth-faced
gentleman looking toward me, looks anything like
the man? A. Yes.

Q. Is he the man? A. Yes.

Q. How long did he stop at your place at that
time? A. A week.

Q. Did he have any other trunk?

A. Yes, he had two trunks.

Q. Did you pay any attention to the trunks after
he got them in the room? A. No.

Q. Would you know the other trunk if you would
see it? A. I guess I would.

Q. Which is it, if it is here?

A. I think that is the one right there.

Q. A trunk like this one here, referring to "United

(Testimony of Marie Nelson.)

States Exhibit 5 [88] for Identification''?

A. Yes, sir.

Q. What was the number of the room he occupied?

A. Twenty-two.

Q. Where is it located? A. 74 Turk Street.

Q. And with reference to the building itself, where is the room? A. A front room.

Q. Is it a corner room?

A. Yes, sir, on the corner.

Q. During the time this man Spencer was at your hotel, did you see him carrying anything to or from the room? A. No.

Q. When were the trunks removed from there.

A. On the 17th day of September.

Q. The 17th? A. Yes.

Q. Did you notice what the weight of those trunks was, did you handle them at all? A. No.

Q. Did you see them handled? A. Yes.

Q. You did see them handled? A. Yes.

Q. Do you know anything about whether or not the trunks went away as heavily laden as when they came, or otherwise? A. No.

Q. You do not know? A. No.

Q. Who took them away? A. I don't know.

Q. Did you see them taken? A. Yes.

Q. You mean you don't know the expressman who took them? A. No.

Q. Did you notice the man who handled them take them away? A. Yes.

Q. From the appearance of handling them when they were taking them away, state whether or not

(Testimony of Marie Nelson.)

one man carried them or two or how it was.

A. Just one man.

Q. Just one man carried them when they were taken away. A. Yes.

Q. When they came in how were they handled,—did you notice? A. No, I did not notice. [89]

Q. You did not notice that? A. No.

Cross-examination.

Mr. PRICE.—Q. A moment ago Mr. Selvage asked you if the gentleman was in the room who had these trunks brought up there, and you said no, did you not? A. Yes.

Q. He is not in the room? A. No.

Mr. SELVAGE.—Q. Did this man who rented your room say anything about a brother? A. No.

Q. Did you see anybody visit him there?

A. Yes.

Q. Who visited him there, do you know?

A. I don't know.

Q. What called your attention to the fact that there was somebody visiting him there?

A. Because I saw him go upstairs.

Q. Was it often, or seldom, or what; how often did you see him? A. Oh, I only saw him once.

Q. Would you recognize the man whom you saw go there? A. I don't think I would.

The COURT.—I don't understand you, Miss Nelson; you say at one moment that the man who rented this room is not now in this room: is that true?

A. No.

Q. What do you mean then?

(Testimony of Marie Nelson.)

Mr. SELVAGE.—She said first she did not see him in the room.

The COURT.—But she just answered to counsel that he is not in the room?

Mr. SELVAGE.—I did not hear that answer.

Mr. PRICE.—Q. You said you saw somebody coming up to room 22 that was occupied by someone along about this time; that is not a very unusual thing, is it, for somebody to go to somebody else's room? A. No.

Q. It is not unusual? A. No.

Mr. SELVAGE.—Q. Now I want to understand about this answer. [90] Mr. Reporter, will you read those questions?

(The first two questions and answers on cross-examination were here read by the reporter.)

Q. Who did you mean by that,—the man who brought the trunks up, when you answered no, he was not in the room? Did you have reference to the man who occupied the room or to the expressman who brought the trunks; do you understand what I say?

A. No.

Q. Do you recognize the man who occupied that corner room? A. Yes.

Q. Where is he? A. There (pointing).

Q. Then he is in the room? A. Yes.

Q. Who did you have reference to there when you said he was not in the room? Do you understand me? A. No.

Q. The defendant's counsel here asked you a question which the Reporter has just read to you and you

(Testimony of Marie Nelson.)

answered that the man was not in the room; what did you mean by that? You do not understand what I have reference to? A. No.

Q. Then you say the man is here in the room?

A. Yes.

Q. And you point him out as which one?

A. Right there (indicating).

Q. The man sitting there beside the man at the end of the table? A. Yes.

Q. (Addressing the defendant.) Mr. Murphy, will you kindly stand up. Is that the man? A. Yes.

The COURT.—Q. I understand you to say that, Miss Nelson, this gentleman registered at your hotel under the name of Spencer and stayed there a week?

A. Yes, sir.

Mr. SPENCER.—Q. And those trunks were in his room, were they? A. Yes.

Mr. PRICE.—Q. How often did you see the gentleman who occupied room 22, during that week?

A. I guess every day.

Q. You saw him coming and going?

A. Yes. [91]

Q. You saw him passing in and out from time to time? A. Yes.

Q. Just as any other roomer in the house; you saw him just the same as you did anyone else rooming in the house? A. Yes.

Q. Miss Nelson, you state these dates very accurately; has your memory been refreshed on that? Have you had conversation with anyone recently with reference to coming here and giving testimony?

(Testimony of Marie Nelson.)

A. No.

Q. Have you talked with anyone at all with reference to coming here and giving testimony? That is all. We excuse the witness.

Testimony of Joseph Head, Recalled for the United States.

Mr. SELVAGE.—Q. State whether or not you have seen the handwriting of the defendant, Andrews.

A. Yes, sir.

Q. Do you know his handwriting when you see it?

A. Fairly well.

Q. I will call your attention to the signature of this register again; I will ask you whether or not you recognize the handwriting on the ticket that purports to be from Trinidad, Colorado, to San Francisco?

A. I can testify to the capital letters; some of the small letters I could not testify to.

Q. You know that they are the same as what?

A. The same as the capital letters in his book that was found at 30 Waverly Place.

Q. It is the same handwriting? A. Yes.

Q. What book besides the register did you see his writing in?

A. That book that was found by the police officers at 30 Waverly Place.

Q. State what entries in that book you recognize as his handwriting?

A. The word "Denver" in this book is almost absolutely the same as on the ticket. The word "Denver" is on the ticket—or I mean I should say on this hotel register. [92]

(Testimony of Joseph Head.)

Q. Is there anything peculiar about the making of any of his letters?

A. The making of the capital "J" is always the same. He has a distinct way of making the letter "J."

Q. And in the book here is the word "Juarez"?

A. Yes, sir.

Mr. SELVAGE.—I wish at this time to introduce these three in evidence to show the handwriting of the defendant Murphy.

Mr. PRICE.—Q. Mr. Head, you are not a handwriting expert are you? A. No, sir.

Q. Have you ever seen any of the writing made by Mr. Murphy, and if so, where have you seen his writing? A. Except as I have stated.

Q. This is all of his writing that you have seen; is that it?

A. I have seen some letters that we found in the room of George P. Moore.

Q. Just from these letters, and these odd bits of stuff you picked up, that leads you to say you can identify his handwriting: is that it?

A. I say there is a similarity.

Q. A similarity? A. Yes, sir.

Q. Then you do not say positively that this is Mr. Murphy's handwriting, or this is Mr. Murphy's handwriting; you simply state there is a general similarity; is that what you mean to say?

A. Well, I express it a little stronger; there is a marked similarity, marked characteristics.

Q. And you base that simply upon these bits of

(Testimony of Joseph Head.)

stuff you picked up; is that correct? A. Yes, sir.

Q. The stuff you have concluded to be in Mr. Murphy's handwriting? A. Yes, sir.

Q. You base that then upon statements of the conclusion which you have come to; is not that correct?

A. Yes, I make the statement on the conclusions I have arrived at after looking at these different samples of the writing. [93]

Q. Have you ever seen Mr. Murphy sign his name?

A. No, sir.

Mr. SELVAGE.—I offer these in evidence and ask to submit them to the jury to examine them and to note the characteristics of the handwriting.

Mr. CAMPBELL.—If your Honor please, we object to the introduction of these matters at this time upon the ground that it is immaterial, irrelevant and incompetent, and that so far there has been no foundation laid for them and that the *corpus delicti* of this charge laid in the information has not been established.

Mr. DANFORD.—And the witness admits he never saw the handwriting of Murphy.

The COURT.—But the witness last on the stand testified he signed that name in the register, and this witness has compared that with the other signatures.

Mr. DANFORD.—This witness admits he never saw the handwriting of Murphy.

The WITNESS.—No, sir, I take exception to that.

The COURT.—He said he never saw him write.

THE WITNESS.—Yes, your Honor, that is it.

The COURT.—The witness who just left the stand

(Testimony of Joseph Head.)

testified that Murphy wrote his name in the register, "Spencer."

Mr. DANFORD.—Then that would be the witness to put this in under, if at all. This witness does not know the handwriting, of his own knowledge.

The COURT.—No, of course he does not.

Mr. DANFORD.—We submit then that the foundation is not laid.

The COURT.—Sure the foundation is laid because the witness has testified that he compared this writing with the writing in dispute and gives his opinion as to whether or not it is written by the defendant. The objection is overruled. [94]

Mr. DANFORD.—Very well, your Honor.

Mr. SELVAGE.—I will submit the signature on the ticket and the name "Juarez" in the book, on this page, the capital J's.

Testimony of Louis Sang, for the Government.

LOUIS SANG, called for the United States, sworn.

(JOHN ENDICOTT GARDNER sworn to act as Interpreter.)

Mr. SELVAGE.—Q. Where do you live?

A. Oakland, 389 Sixth Street, Oakland.

Q. Do you know these men here, these defendants, Andrews and Poole? I will ask these men to stand up. A. I do.

Q. How long have you known them?

A. Between 3 and 4 years.

Q. Did you have any business relations with them?

A. I have bought opium from them.

(Testimony of Louis Sang.)

Q. I will ask you if you recognize this letter which I now hand you (handing)?

A. I recognize the letter as one that has come to me through the post.

Q. Do you know the handwriting—who it is from?

A. I cannot say that I recognize the handwriting, but the name of the writer is there.

Q. Who is the writer?

A. It is under the name of Walker.

Q. Is the man here in the room who wrote that letter?

A. Of those two men there it is the one on the left-hand side.

Q. It is the one next to the end of the table. I will ask you whether or not you recognize this letter that I now hand you (handing).

A. Yes, sir, this is my answer to his letter.

Q. Is it the answer to the letter that I have just shown you? A. Yes, sir.

Q. Will you tell the man to stand up who wrote this letter? The one who wrote this letter, I want him to stand up. You point to him.

A. That man (pointing). [95]

Q. Is that the man?

A. Yes. I knew him in the correspondence as Walker, Tom Walker.

Q. And this is the man, is it?

A. He is the man.

Q. The man who is pointed out now is the man who is known in this case as Murphy or Andrews. I wish at this time to read these letters to the jury.

(Testimony of Louis Sang.)

Mr. CAMPBELL.—If your Honor please, I desire to interpose the same objection to these letters being read to the jury at this time or introduced in evidence upon the ground that they are immaterial, irrelevant and incompetent and that the proper foundation has not been laid, and that the *corpus delicti* has not yet been established.

The COURT.—The objection is overruled.

Mr. DANFORD.—We note an exception.

The COURT.—The objection is overruled but I do not understand that this reply—where did that come from?

Mr. SELVAGE.—This reply is the reply he wrote to the defendant.

The COURT.—I understand, but how does that bind the defendant?

Mr. SELVAGE.—I don't know the extent to which it would bind him.

The COURT.—Did he receive it? Did it come from his custody or is this a copy that the witness retained?

Mr. SELVAGE.—I have not learned yet.

The COURT.—You had better learn it. The letter which he says was received from the defendant Murphy under the name of Walker may be admitted in evidence.

Mr. SELVAGE.—I will go further into that as soon as I read the letter, because I am going to ask questions in reference to the letter.

The COURT.—This letter was received from Walker. Let me [96] see it. Is there anything

(Testimony of Louis Sang.)

in it bearing on this case? Oh, yes, read it.

Mr. SELVAGE.—It reads:

“El Paso, Texas, May 19, '13.

Friend Louie: Your friend Fong Chin in Juarez spoke to me in regard to a letter he received stating that you want to see either George or myself about handling some goods for you out of Guaymas, Mexico by boat. Things are in bad shape around Guaymas as there is no goods coming out of there by railroad and your boat route may be O. K. The railroads are all tied up south of Chihuahua City and there has not been any shipments of goods into Juarez for about three weeks. I just returned from a stop in New York City, and George has left. Before I arrived he left. He left word he would be back in about a week, so if you still want to go through with that proposition let me hear from you at your earliest convenience and I will come to San Francisco and talk the matter over. I am,

Very truly,

TOM.”

Address, Thomas Walker, Texas, 210½ Broadway, El Paso.

Q. What business had you referred to in your letter that *he speaking* about here? A. Opium.

Q. Where did this answer that I have here come from—do you know anything about it?

A. I wrote this to send to the party that wrote the letter, in answer to this letter, but I tore it up afterwards and the officers picked the pieces up from the waste-paper basket.

(Testimony of Louis Sang.)

Mr. SELVAGE.—Then it is not admissible; we do not present this at all.

Mr. DANFORD.—Now, if your Honor please, I move to strike out the reply as to what this business referred to. He answered “opium.” I move to strike that out upon the ground that there is no foundation laid and nothing to show in the instrument itself, which would be the best evidence of that it would refer to. [97]

The COURT.—It does not show, and therefore the failure to show may be supplied by parol proof, which is done hereby saying he referred to opium as the goods he desired to have handled. The motion will be denied.

Mr. DANFORD.—Exception.

Mr. SELVAGE.—Q. Do you know who it is he refers to in this letter by the name of George?

A. The one with the glasses on.

Q. Which defendant is it? I will ask that the defendant with the glasses on stand up, so that I can have it in the record—is this the man, George Poole? A. That is the man.

Q. I call your attention to some receipts here pasted upon a paper and ask you if you saw these before. First, I will ask you is this letter in the handwriting of Mr. Andrews or Murphy?

Mr. PRICE.—We object to that. It is not shown that the witness is familiar with the handwriting.

Mr. SELVAGE.—I will show that.

Q. Did you receive many letters from Mr. Walker?

(Testimony of Louis Sang.)

A. No, this is the only one that I have received from him.

Q. Did you ever see him write? A. No.

Mr. SELVAGE.—I will offer this letter in evidence.

(The letter was here marked “U. S. Exhibit No. 19.”)

Q. I call your attention to these receipts; what are they, if you know?

A. Receipts for money I sent.

Q. Money you sent to whom? A. To George.

Q. This defendant here, George Poole?

A. Yes.

Where did you send it to?

A. To El Paso, on the American side.

For what was that money sent to this man, this defendant? A. For opium.

Q. What was he to do with the opium; what was the defendant to do with the opium?

A. I sent him the money and he was to let me have the opium. [98]

Mr. SELVAGE.—I offer that in evidence, these two receipts that he has just recognized and testified regarding. I wish to read them at this time to the jury.

Mr. PRICE.—We have no objection.

Mr. SELVAGE.—(Reading:) “Stockton, Cal., March 14, 1913. Received from George Sandees”—

Q. Who is George Sandees?

A. That is the name I was to be known by.

Mr. SELVAGE.—(Reading:) “\$300. t. t. to First

(Testimony of Louis Sang.)

National Bank, El Paso, Texas, \$300; San Joaquin Valley Bank, J. R. Koch, Assistant Cashier."

The other one reads as follows: "Stockton, Cal. March 20, 1913. Received of George Sandees \$100 t. t. to First National Bank. El Paso, Texas; San Joaquin Valley Bank, J. R. Koch, Assistant Cashier."

(The document was here marked "U. S. Exhibit No. 20.")

Q. I will call your attention to other receipts and ask you what those are?

A. The receipt below is not connected with this affair; the one above is for an amount that he borrowed from me.

Q. Who borrowed the money from you?

A. George.

Q. I call your attention to a telegram and ask you if you recognize it, and if so, state what it is?

A. I recognize the telegram as one asking for \$100.

Q. Who, if you know, sent that telegram?

A. George Poole.

Q. To whom did he send it? A. To me.

Mr. SELVAGE.—I offer this in evidence.

Mr. PRICE.—No objection.

Mr. SELVAGE.—It reads: "G. S. 51; 13 via Nogales Junction, Guaymas, Mexico, July 16, 12. Louie Sang, 804 Grant Avenue, San Francisco, California. Wire money your agent quick \$100 option. Will wait until tomorrow. G. P. O. 1221."

(Testimony of Louis Sang.)

(The document was here marked "U. S. Exhibit No. 21.")

Q. I call your attention to a letter dated August 8, 1912, and ask you to state what it is.

A. I do not know for whom the name "J. J. Magee" stands.

Q. Do you know who wrote the letter?

A. At first when I received the letter I did not know from whom it came, and I just laid it aside.

Q. Did you afterwards learn from whom the letter came? A. I could not find out.

Q. I call your attention to another letter dated August 10th?

A. This letter I received from Poole.

Mr. SELVAGE.—I offer this in evidence at this time as being a letter which Louis Sang received from Poole.

Mr. PRICE.—We have no objection.

(The letter was here marked "U. S. Exhibit No. 22.")

Mr. SELVAGE.—(Reading:) "California Limited, Santa Fe. En route, August 10. L. Sander"—to whom did he refer by the name L. Sander?

A. To myself.

(Reading:) "Sir. Owing to some trouble at the mines I have been unable to get cars so have been unable to place your one hundred dollar option but I think I will be able to deliver to you in a short time. G.P.O."

Q. What did that letter refer to, what did the word "option" refer to?

(Testimony of Louis Sang.)

A. That \$100 had reference to a promise that he made that he would get me some watches.

Mr. SELVAGE.—That is all.

Cross-examination.

Mr. PRICE.—If your Honor please, the cross-examination of this witness may take some time. The hour is growing late. Will we go ahead now?

The COURT.—Yes. [100]

Mr. PRICE.—Q. Louis Sang, you live in Oakland, do you say? A. Yes, sir.

Q. How long have you lived over there?

A. Since last year.

Q. What do you do? A. I am a merchant.

Q. What line of business are you particularly carrying on? A. General merchandise.

Q. General merchandise; you handle everything?

A. Yes.

Q. And you handle opium? A. No.

Q. You do not handle opium; you never have handled opium? A. No.

Q. Have you had any trouble at all with the revenue authorities? A. Never.

Q. They have been to see you a number of times about this particular case? A. No.

Q. Have they been to see you at all?

A. They came to my home a month ago to make a search.

Q. Did they come again after that? A. No.

Q. What did they say to you when they came to your house?

A. They went right to work to search my house;

(Testimony of Louis Sang.)

they did not say anything to me.

Q. Did they say why they were searching your home? A. Afterwards they did.

Q. What did they say?

A. That they suspected me of being an opium smuggler.

Q. They told you that they suspected you of being an opium smuggler; is that correct?

A. That is what they said.

Q. You knew what was meant by opium smuggler, did you not? A. Somewhat.

Q. Did they say anything to you about arresting you for being an opium smuggler?

A. They took me into custody that day.

Q. They arrested you for being an opium smuggler? [101]

A. They said they would take me in on suspicion.

Q. And you denied being an opium smuggler?

A. I told them I was not in that business.

Q. Were you not the manager of the Tee Suey Wong Co., along sometime in 1909, or somewhere along about that time, a few years ago?

A. No, I was a member of the Sue Chung Wing & Company.

Q. When the officers arrested you, where did they take you?

A. At first to the Alameda County Jail.

Q. How long did they keep you in there?

A. Overnight.

Q. They talked with you about this case, did they not? A. No.

(Testimony of Louis Sang.)

Q. They did not say a word to you about this case?

A. There was no one there to ask me any questions.

Q. Did you talk with the officers then at all, anywhere, about this case? A. No.

Q. You never have talked to a single soul, about this case; is that correct? A. No.

Q. Then this is the first time you have made a statement about this case? A. Yes.

Q. Did not the officers tell you that if you would not come here and testify in this case, that you yourself would be prosecuted?

A. All I received was a paper to come here to testify. I did not even know what the occasion was for me to come here today except from this paper. The marshal handed me this, or left it with me.

Q. Then you deny, do you, that the officers asked you to come here and testify and told you that if you would come here and testify you would not be prosecuted?

A. They never said anything like it.

Q. Has anyone else besides the officers talked to you? A. I don't understand you.

Q. Has anyone else besides the officers asked you to come here and give evidence on behalf of the Government in this case? [102]

A. No, I did not know anything about it until I got my subpoena. It had the name of Enlow—it had the name Andrews Thomas Andrews. I didn't know of any such case as that.

Q. You never handled opium, you say? A. No.

Mr. DANFORD.—If your Honor please we would

(Testimony of Louis Sang.)

like to excuse the witness now and then recall him for further cross-examination.

The COURT.—No. Proceed with the cross-examination.

Mr. PRICE.—Take the witness.

Mr. SELVAGE.—That is all.

The COURT.—That is all.

(An adjournment was here taken until to-morrow, Saturday, November 22, 1913, at 10 A. M.)

Saturday, November 22, 1913.

Mr. PRICE.—If your Honor please, we would like to recall Mr. Louis Sang for a question or two.

The COURT.—For more cross-examination.

Mr. PRICE.—Yes, sir.

The COURT.—No, sir, you can't do it. You had him on the stand here yesterday and you concluded with him and he was dismissed. Call the next witness.

Testimony of F. W. Lynch, for the Government.

F. W. LYNCH, called for the United States, sworn.

Mr. SELVAGE.—Q. Where do you reside?

A. San Francisco; 155 Downey Street.

Q. What is your business or occupation?

A. Clerk in the Marine Division, Custom-house.

Q. Any other position?

A. No, sir; at other times I have collected on the Front and had various other duties in the Custom service. [103]

Q. State whether or not you are familiar with the Spanish language?

(Testimony of F. W. Lynch.)

A. I am fairly familiar with it; I am able to speak and read it; I have a practical knowledge of it.

Q. Do you know the meaning of the word "Amapol"? A. Yes, sir.

Q. What is it?

A. The word as given in the dictionary is "amapola" and that means poppy. I had heard the word before but it passed out of my mind. It means poppy.

Q. Is there any definition given of it?

A. There is another definition given, poppea.

Q. Is there anything further given in the definition about a sleeping plant?

A. No, sir; I will just describe it. I remember it distinctly. In the dictionary amapola is given as poppy, poppea; that is all. If you turn to "poppy" you will find the Spanish word "amapoppea," which means sleeping plant, and also amapola. In regard to amapol, people are careless and they sometimes drop a syllable.

Cross-examination.

Mr. PRICE.—Q. Where have you studied the Spanish language?

A. I was born on a sheep ranch in Southern California, and most of my father's employees were Mexicans. My mother taught me. I have also taken Spanish lessons. I have studied Spanish carefully by myself. I have read novels and scientific works in Spanish. I have also traveled in Spain, and spoken with people there, and I am practically familiar with it.

(Testimony of F. W. Lynch.)

Q. Have you ever taken a Spanish course in any institution? A. No, sir.

Q. You never have? A. No, sir.

Q. Your knowledge of Spanish is gained primarily from the knowledge you learned on a sheep ranch in Southern California.

A. And from my mother, who was a good scholar in that language.

Q. Was your mother Spanish?

A. No, sir, she was a native of Ireland. [104]

Q. Where did your mother get her education in Spanish?

A. She was self-taught; also she taught in the public schools of San Francisco in the early days when many of the pupils were Spanish-speaking.

Q. Do you say that they taught Spanish as one of the regular course in the public schools at that time?

A. I did not say they taught Spanish. I said that many of the pupils spoke Spanish and it was necessary for the teachers to understand it.

Q. From what dictionary do you take the definition of these words you have just given us?

A. Seaome—Newman and Velasquez' Revision of the Spanish Dictionary.

Q. Have you consulted the Cortina Dictionary with reference to this? A. No, sir.

Q. Or Appleton?

A. Appleton's Dictionary is merely a revision by Valesquez. I have it at my home.

Q. Have you consulted it?

(Testimony of F. W. Lynch.)

A. Not recently, but I have seen the word "amapol."

Q. Did you consult the dictionary that is published by the Academy in Madrid, the Spanish Dictionary—I don't recall the name of it now?

A. No, sir, I have not.

Q. You are in the customs service?

A. Yes, sir.

Q. In the Government service? A. Yes, sir.

Q. How is the word spelled that you have just been defining?

A. A-m-a-p-o-l-a the accent is on the penult syllable, next to the last.

Q. Then you pronounce that "amapola"?

A. Yes, sir; that is the word.

Q. And the definition which you give of that is poppy? A. Poppy, yes.

Q. Does it mean a flower? Is it applied to any other sort of flower?

A. I believe not; I have never seen it applied to any other flower.

Q. Does the dictionary give the meaning of that as being applied to any other flower?

A. It gives, as I have said, the word "pappavia."
[105] I have never seen that word in any other place.

Q. Have you ever seen the plant?

A. I don't even know what it is. I could not tell you anything about it.

Q. Then you don't know that pappavia means poppy?

(Testimony of F. W. Lynch.)

A. On the authority of this dictionary, and also my study of Spanish—

Q. (Intg.) Have you the dictionary here?

A. It is an old edition. Appleton's is merely a revision of this.

Q. Find me the word in this dictionary. By the way, Mr. Lynch, do you know Mr. Aguirre, the Official Interpreter of the State courts? A. No, sir.

Q. You don't know him? A. No, sir.

Q. Do you know of him?

A. No, sir, I am not acquainted with him.

Q. And you don't know of him at all?

A. No, sir. I may possibly have seen his name, but I don't know of him. Here it is. Now, if you will turn to the other section and look for poppy, you will find it right there.

Q. This dictionary, by the way, is what is known as the English-Spanish dictionary, is it not?

A. And Spanish-English, yes.

Q. Is not this dictionary intended for a ready reference, *principal* for people using an interchangeable language? A. Yes, sir.

Q. For a ready, hasty reference? A. Yes.

Q. If you had any issue of importance would you accept this dictionary as being authority and being a complete and exhaustive work upon the definition, construction or use of any word or phrase in the Spanish language to be translated into English or anything in the English language to be translated into Spanish?

Mr. SELVAGE.—I wish you would limit that to

(Testimony of F. W. Lynch.)

the words that are in the dictionary and what the dictionary purports to give.

Mr. PRICE.—The witness, if your Honor please, has offered this as his authority. We believe we have a right to cross-examine [106] upon this authority to determine even from this witness' own statements as to how far he considers the reliability of the authority.

The COURT.—I think the suggestion made by counsel is proper; that it ought to be limited to such words as do appear.

Mr. PRICE.—My position is that there may be a great deal in the Spanish language and a great deal in the English language which does not appear in here and which would be evidence of the value of the book as an authority.

The COURT.—There may be a great many words in the Spanish language that do not appear in that dictionary, but with them we have no concern. The same as to words that are but little used. The question is, do the Spanish words that appear in there receive a proper English equivalent.

Mr. PRICE.—Q. Do the words which appear in here receive a proper, a thorough and an exhaustive equivalent of their use into the other language?

A. With regard to exhaustive of course they do not, because that is not the largest edition. But I have found that dictionary entirely reliable as far as it goes and I would consider the definitions there correct as far as they go. A more voluminous dictionary of course might have other definitions and

(Testimony of F. W. Lynch.)

other words, but so far as that goes I have found it entirely reliable. I have compared it with the latest edition.

Q. In other words, take the word "amagon," as we find it here, meaning dandelion, there is no other meaning given there; do you mean to say it is not possible that it has other meanings?

A. That is possible.

Mr. SELVAGE.—If your Honor please, I think the examination is going beyond reason, beyond the limits of the direct. He has a dictionary there that it would take hours and hours to select different words from it and cross-examine the witness about them. [107]

Mr. PRICE.—I am not going any farther than is necessary. I am not going through the dictionary.

Q. Amapola means poppy and papaver?

A. I don't ever know the correct pronunciation of papaver. I have never seen the word before or never noticed it.

Q. From your knowledge of the Spanish language, how should that word be pronounced.

A. Papaver.

Q. That is an English word? You don't know what that flower is?

A. There are technical terms which I do not know.

Q. Have you looked it up?

A. No; I have not taken the trouble to look it up.

Q. Do you know whether it appears in this dictionary or not?

The COURT.—There is a Standard dictionary in

(Testimony of F. W. Lynch.)

my chambers and you might refer to that.

Mr. PRICE.—Q. You have not consulted any dictionary to find the meaning of the word “amapola”?

A. No, I have not, but I have said already I have met the word before; I have seen the word in my reading. Also it is in that dictionary and also in Appleton’s.

Q. What reading have you seen it in?

A. I could not mention the whole list?

Q. Just general reading?

A. I have seen it in Don Quixote; I have seen it in Gil Blas; I have read twenty standard works.

Q. Have you met it just in general reading, or in some particular work?

A. No particular work; reading in newspapers, or novels, and so forth.

Testimony of Fred West, Recalled for the United States.

Mr. DANFORD.—Your Honor, this is the recalling of one of their witnesses.

Mr. SELVAGE.—We will ask him questions.

Mr. PRICE.—I think we are entitled to know for what purpose the witness is recalled. [108]

The COURT.—No, you are not entitled to know. You are entitled to object perhaps at the proper time.

Mr. SELVAGE.—Q. Mr. West, what is opium made from?

A. There is a classical definition of opium which most pharmacists have very firmly imprinted in their heads, and it reads the concrete milky exuda-

(Testimony of Fred West.)

tion obtained from incising the unripe capsules of "Papaver somniferum," family papaveraceae.

The COURT.—Q. What is the meaning of the word "sommiferum" Mr. West?

A. The word is derived from "somnos" meaning sleep.

Mr. SELVAGE.—Q. In other words, opium is taken from the poppy plant?

A. It is the concrete milky exudation from the poppy plant.

Cross-examination.

Mr. PRICE.—Q. You state that opium is made from what plant? A. The papaver somniferum.

Q. That is the botanical name for poppy, is it?

A. It is the pharmaceutical botanical name for poppy; we have another poppy in California which has several names. I have the botanical name of that if you wish it.

Q. What is the botanical name for that?

A. That is called Eschscholtzia-California. It is named after a celebrated botanist Escholtz; I think his first name is Carl.

Q. The name you have given for poppy is the pharmaceutical name and not the botanical name?

A. The pharmacists depend upon the classification of the celebrated Botanist Linnaeus.

Q. Is it the pharmaceutical name or the botanical name as it is generally known? Let us get down to facts. We don't care what the answer is.

A. The botanical name is Popaver somniferum.

Q. That is the designation that is given in phar-

(Testimony of Fred West.)

macy? A. Yes, sir. [109]

Q. How many families have that same general name?

A. The "Papaveraceae. As far as my knowledge goes it includes the poppy family solely.

Q. And there are six different families. I will ask you to look at the word here in this dictionary (pointing to word in Funk & Wagner's Dictionary). Is that the word you refer to?

A. Papaveraceae. Of course if you use the genera and the species you would get an unlimited number.

Q. Is that the word you use? (Indicating.)

A. "Papaveraceae" is the name of the family of the poppy plant. The Latin definition for sleeping in interjected from somniferum the second word.

Q. Don't you find from this definition right here that it embraces 26 genera and 200 species?

A. Yes, that means that there are that many kind of poppies.

Testimony of Raphael Manzo, Recalled for the United States.

(F. W. LYNCH, acted as Interpreter).

Mr. SELVAGE.—Q. Mr. Manzo, you have testified that the bank that you are Manager of, is located in Mexico? A. Yes, sir.

Q. Has your bank done business continuously in Mexico for the last two years?

A. Yes, sir, much more time beyond that.

Q. Have you had occasion to move your bank to the American side during that period?

A. Since the beginning of the revolution we were

(Testimony of Raphael Manzo.)

obliged to change the business of the bank to the American side, to Nogales, in Arizona.

Q. Did you, when you changed your business to the American side, to Nogales, take with you all of the property of the bank?

A. The furniture we did not remove, but the money, the books and so forth we did. [110]

Q. Was there anything left in the bank except the furniture?

A. There were boxes left there with things inside.

Q. What boxes were left there with things inside?

A. I did not know what was in them.

Q. Were those the cases that you testified to when you were on the stand before, on yesterday?

A. The same.

Q. Why did you not move those with you to the American side?

A. Because the Chinese had told us that they contained opium and we knew that opium was contraband on the American side, and for that reason I did not take them.

Cross-examination.

Mr. PRICE.—Q. Was there anything else left in the bank? A. Nothing more.

Mr. PRICE.—(Addressing Mr. Lynch, the Interpreter.) Mr. Lynch, I wish you would repeat my questions to the witness exactly as I give them. If I am not mistaken your transaction of that question was, if there was anything besides the furniture and the books. My question was, was there anything else in there. I did not mention furniture.

(Testimony of Raphael Manzo.)

The INTERPRETER.—All right, sir. I will try and be literal. A. Nothing else.

Mr. PRICE.—Q. After they left your bank, do you know whether they went to the interior of Mexico, or not?

A. The boy to whom I gave them did not tell me anything about it.

Q. What is the name of that boy?

A. Jose Maria Tapia.

Q. Where is he now?

A. I don't know; he went away in the revolution.

Q. You have not seen him in Nogales recently, have you?

A. I have not seen him in Nogales.

Q. You do not know yourself what was in these boxes, do you?

A. I don't know personally, and I never saw what was in them. [111]

Q. You stated on your direct examination that the Chinaman told you what was in the boxes; were the defendants present when the Chinaman told you that? A. No.

Mr. PRICE.—If your Honor please, we will ask to have that stricken out as a statement not made in the presence of the defendant.

The COURT.—The motion will be denied. They were dealing with these boxes in the usual course of business and I understand they received them from Chinaman and were informed of their contents. The testimony was only to show why they did not remove the boxes at the time they removed the other

(Testimony of R. H. McCormick.)

property and valuables of the bank to the American side. Motion denied.

Mr. PRICE.—An exception.

Testimony of R. H. McCormick, for the Government.

R. H. McCORMICK, called for the United States, sworn.

Mr. SELVAGE.—Q. Where do you reside?

A. 1534 "K" Street.

Q. In this city? A. Yes, sir.

Q. What is your business or occupation?

A. Newspaper man.

Q. Have you been in that business continuously for the last year? A. Yes, sir.

Q. Have you at any time had anything to do with the hotel business? A. Yes, sir.

Q. What have you had to do with?

A. On the appointment of the superior court I was Receiver of the property known as the Hotel Porter, 91 Turk Street.

Q. While Receiver of the Hotel Porter, did you see either one of these defendants here? Mr. Poole or Mr. Murphy. A. Yes.

Q. Which one? A. Both.

Q. State whether either one of them stopped at the hotel.

A. Mr. Moore stopped at the hotel. [112]

Q. That is Mr. Poole. You knew him as Mr. Moore, did you?

A. The gentleman in the light clothes.

Q. Which one is he?

(Testimony of R. H. McCormick.)

A. The gentleman in the light clothes and with the glasses.

Q. Do you recall the room that he occupied?

A. 509.

Q. For how long a period did he occupy the room?

A. One month.

Q. Were you in the room during the time?

A. Yes, sir.

Q. State whether or not he had any trunk there.

A. He did.

Q. How many. A. Two.

Q. Could you identify the trunks?

A. I remember the general appearance of the trunks; I never saw them excepting closed, standing in the room.

Q. State whether or not you can identify any trunk here as being trunks that you saw.

A. The green tin trunk.

Q. You identify "U. S. Exhibit No. 6"?

A. A trunk to the best of my recollection in every and all respects similar to that trunk.

Q. Did you see him have any grips or suit-cases?

A. Not in the room.

Q. Did you see him have any at any place?

A. I have seen him carrying a grip.

Q. What was the character of the grip?

A. It was a dark grip.

Q. I will call your attention to a little black grip here and ask you if you have ever seen this before?

A. It is similar to the one that I saw Mr. Moore have.

(Testimony of R. H. McCormick.)

Q. Similar to the one you saw him carry?

A. Yes, sir.

Q. Describe the color; was it black, or what color was it?

A. I would not be positive it was black; it was a dark grip, similar to the one here. I could not say that was the grip. It is similar to the one I saw.

Q. Under what circumstances did you see him have that grip.

A. He came down in the elevator with it. [113]

Q. How often?

A. Not more than once to my recollection did I ever see him with a grip in his hand.

Q. Did you notice particularly at the time his handling of the grip, and if you did, what did you see about it?

A. I paid no particular attention to the grip as recalled by the question; he placed the grip on the floor in the office after coming down in the elevator; I think I was without the office and walked within at the time that I speak of; the grip was in his hand and he set it down, possibly to transact some business; I don't remember what he stopped at the office for.

Q. Did you notice anything about his movements to indicate whether it was heavy or light, or what condition it was in?

A. I did not pay any attention to that. I presumed from the way it was set down that it contained something; I presume at the time that it was wearing apparel, if the thought struck me at all; I

(Testimony of R. H. McCormick.)

do not know that it did.

Q. Do you recall testifying before the Grand Jury? A. Yes, sir.

Q. Do you recall—I will just ask you this in order to refresh your memory—whether or not you testified there that you noticed it was very heavy when he set it upon the floor?

A. Yes, I noticed that it contained something when he set it upon the floor.

Q. And that it had the appearance of being very heavy?

A. Yes, sir, that it would indicate that there was something in it, that it was not an empty grip.

Q. Where did he go with the grip after you saw that?

A. He returned to the elevator, which is an automatic elevator, and went to the first floor and out of the house,—went to the ground floor I should say out of the house, passes out of the main entrance of the building.

Q. Where is the office of the hotel?

A. On the second floor. [114]

Q. And he went to the first floor and out of the house? A. Yes, sir.

Q. Do you recall who was with him at that time?

A. He was alone.

Q. How often did you see the two defendants together there?

A. Mr. Murphy never stopped in the house, and the only time I ever saw Mr. Murphy would be when he was visiting in the rooms; I have seen them in the

(Testimony of R. H. McCormick.)

room once together, in the room in which they were visiting, not in Mr. Moore's room; I never saw them in Mr. Moore's room.

Q. Who else was in the room where they were visiting?

A. Miss Benier and there may have been some others.

The COURT.—Q. Did you state when this was?

A. I did not, you Honor.

Q. What time was it?

A. It would be in the month of July, 1913.

Cross-examination.

Mr. PRICE.—Q. The month of July?

A. Yes, sir.

Q. Do you remember what day he came there, about what time?

A. It would be about during the first week in July.

Q. What date was it you testified to seeing Mr. Poole go out with that grip?

A. I have no recollection; as to the date it would be sometime within the month that he was in the house.

Q. Do you know whether or not that was just shortly before he left?

A. I have no way of recalling the time because he visited the office several times, not frequently but possibly half a dozen times, during the time that he was in the house. It is to the best of my recollection that it would be sometime; I mean by that a week or two weeks after coming into the house as a guest.

Q. Well, as a matter of fact, was not the time that

(Testimony of R. H. McCormick.)

you saw him with this grip, just about the time that he was moving from your hotel to some other hotel?

A. I could not answer it any more definitely than I have. [115]

Q. Have you seen other people coming in and out of your hotel with grips similar to that?

A. I do not recall that during the 14 months I was there, that I ever saw a grip in the hotel of that character.

Q. Well, you know, do you not, that it is not an unusual thing for people to carry grips similar to that? A. Yes, I know that is not unusual.

Q. I don't doubt but what you have one like that yourself, haven't you—similar in some way?

A. No. I have a bag that shape, red leather.

Q. Now, the same as to this trunk, this trunk is only similar to the one you saw in that room; that is your evidence, is it?

A. Yes, the tin covered trunk with green tin.

Q. And a good many of the guests have trunks there? A. Most of them.

Q. Square trunks?

A. Mostly all square trunks, yes, sir.

Mr. SELVAGE.—Q. Did you see him register at the hotel? A. I did.

Q. Do you know where the register it?

A. No, sir. The litigation has been concluded and I turned the property over. I have not the register.

Mr. SELVAGE.—You may step down a minute. I am going to see if I can find that register in the office. I will put on another witness in the meantime.

Testimony of Dash Katona, for the Government.

DASH KATONA, called for the United States, sworn.

Mr. SELVAGE.—Q. Where do you reside?

A. Oakland.

Q. What is your occupation?

A. Clerk in a hotel.

Q. What hotel? A. Hotel Crellin.

Q. Do you know either of these defendants, Mr. Murphy or Mr. Poole?

A. Yes, sir, I recognize Mr. Murphy. [116]

Q. Did he ever stop at your hotel while you were there? A. Yes, sir.

Q. Under what name did he register?

A. A. J. Spencer.

Q. I will call your attention to the register of the hotel; about when was it he registered there?

A. In June, I believe, the last time.

Q. June of this year?

A. Yes, sir; I am not quite sure.

Q. Had he registered there prior to that time?

A. Yes, sir, twice I believe.

Q. Did he always register under the name of Spencer? A. Yes, sir.

Q. I will ask you whether or not these are the registers of that hotel? A. Yes.

Q. Will you kindly find the name under which he registered?

A. There is one, in 1912, in November.

(Testimony of Dash Katona.)

Q. Is that his own handwriting?

A. Yes, sir.

Q. I will ask you, the one in 1912 is found upon the register of the Hotel Crellin on November 18th; is it?

A. Yes, sir.

Q. Show me the name so that I can show it to the jury.

A. Here. (Indicating.)

Q. Is that his own handwriting? A. Yes, sir.

Mr. PRICE.—We object to that, if your Honor please. It shows a date a long time prior to the date alleged in the indictment, and therefore is immaterial, irrelevant, incompetent, and without the issues of this case.

The COURT.—Objection overruled.

Mr. PRICE.—We note an exception.

Mr. SELVAGE.—Q. Now, in the other; just state where it is found—on what date?

A. Monday, February 17, 1913.

Q. And it is found on that page of the Hotel register?

A. Yes, sir.

Mr. PRICE.—We make the same objection to that, if your Honor please. [117]

Mr. SELVAGE.—And the other register?

A. June 20, 1913.

Q. Is that in his own handwriting?

A. Yes, sir.

Mr. SELVAGE.—I will ask to introduce these pages in evidence. I will pass them to the jury so they may examine the handwriting.

The COURT.—Mr. Price, your objection will be

(Testimony of Dash Katona.)

considered to have been made to the offer and over-ruled.

Mr. PRICE.—Yes, your Honor, the same objection and exception.

(The document was here marked “U. S. Exhibit No. 23.”)

Mr. SELVAGE.—And in connection with that I will call your attention, gentlemen of the jury, to the signature on the transportation ticket, and also the handwriting on the letter that has been introduced in evidence. I also call the jury’s attention at the same time to the signature on the sheet of the Lenox Hotel.

Q. State whether or not you ever saw these two defendants together at the hotel.

A. I don’t recognize the other party.

Mr. SELVAGE.—That is all.

Mr. PRICE.—No cross-examination.

Testimony of R. H. McCormick, Recalled for the Government.

Mr. SELVAGE.—Q. Mr. McCormick, I will call your attention to a hotel register and ask you whether or not that is the one that Mr. Poole signed?

A. It is.

Q. Where is his name?

A. The register is not paged, but it is under the date of Sunday, September 6th, 1913, and the first signature under that date. The room assignment is in my own figures.

Q. Is the signature in his own handwriting?

A. It was made in my presence.

(Testimony of R. H. McCormick.)

Q. And made by him? A. It was made by him.

The COURT.—Q. And the name is what?

A. George Moore.

Mr. SELVAGE.—I wish to call the jury's attention to the [118] signature.

Mr. PRICE.—The book has not been introduced in evidence as yet.

Mr. SELVAGE.—I will offer it in evidence at this time.

Mr. PRICE.—I am willing to stipulate that that book may be introduced in evidence.

(The book was here marked "U. S. Exhibit No. 24.")

Mr. SELVAGE.—I wish to call your attention at the same time to the receipt that was given for the boxes in Mexico, and to the letter that was written to Louis Sang by Olin on August 10th of this year.

Q. I will ask you if this defendant is the man who signed that book or that register—Mr. Moore?

A. Yes, sir.

Testimony of Maud Fay, for the Government.

MAUD FAY, called for the United States, sworn.

Mr. SELVAGE.—Q. What is your name?

A. Maud Fay.

Q. Where do you live? A. 440 Fourth Avenue.

Q. In this city? A. In the Richmond District.

Q. Do you know these defendants here?

A. I do.

Q. How long have you known them?

A. I know Mr. Moore since about the latter part of June.

(Testimony of Maud Fay.)

Q. And how long have you known Mr. Murphy?

A. A short time afterwards.

Q. Did you see them together?

A. Occasionally.

Q. Whereabouts?

A. Well, in a restaurant and on the street.

Q. Did you ever occupy any rooms near to the one Mr. Moore occupied? A. No.

Q. Were you ever at his room? A. I was.

Q. What hotel? A. The Porter.

Q. State whether or not he had any trunks or grips or suitcases there. A. He did.

Q. What trunks did he have? A. Two trunks.

Q. Would you recognize the trunks?

A. One of them I would; the [119] other one I am not sure of.

Q. Which one would you recognize, is there any here that you recognize? A. Yes.

Q. You may go and examine the trunk if you wish, or any of them?

A. This trunk is the only one I recognize.

Q. You recognize "Exhibit 6," do you, as being the trunk in his room? A. I do.

Q. I will ask you whether or not you recognize any grip that was in his room, or that he had?

A. Yes, that black one.

Q. This one (pointing)? A. Yes, sir.

Q. Where did he have this?

A. Well, it generally stood on his dressing-table.

Q. Did you ever examine it in his room?

A. No.

(Testimony of Maud Fay.)

Q. Did you ever see him have any suit-case or grip upon the street with him? A. No.

Q. Did you at the hotel, other than in the room?
A. No, I never saw him.

Mr. SELVAGE.—I wish to offer in evidence at this time this trunk, “Exhibit No. 6 for Identification,” and also the black grip which I hold in my hand, which this witness identifies as the grip she saw in his room.

Mr. PRICE.—I wish to cross-examine her before this is introduced in evidence.

The COURT.—Proceed.

Cross-examination.

Mr. PRICE.—Q. Miss Fay, how do you know this is the same trunk you saw in Mr. Poole’s room?

A. Well, of course, I could not swear it is, but the one in his room looked a great deal like that one.

Q. Then you won’t state under oath that this is the trunk you saw in Mr. Poole’s room, will you?

A. As far as I know I certainly would state that it was the trunk. [120]

Q. Well, do you know positively that this is the same trunk you saw there?

A. Of course, it is open now, but closed I could tell better.

Q. We will close it.

Mr. SELVAGE.—Just walk down and examine it if you wish.

A. Yes, sir, I am certain that is the trunk.

Q. Any mark on it by which you identify it?

A. No, there is no mark.

(Testimony of Maud Fay.)

Mr. PRICE.—Where is that other trunk, Mr. Selvage?

Mr. SELVAGE.—It has not been presented but we will have it brought in.

Mr. PRICE.—Q. Miss Fay, did you ever handle that grip? A. I did not.

Q. Your knowledge of that grip is based entirely on the fact that you have seen it in the room?

A. I saw it a great many times.

Q. Now, of those two trunks which one was it you saw in Mr. Poole's room?

A. I saw them both in Mr. Poole's room.

Q. Did he have two trunks there? A. He did.

Q. Did you not testify a moment ago you only saw one trunk in there?

A. I testified I saw two trunks in his room.

Q. What particular marks did you find on either one of these trunks that you identify?

A. I don't know of any marks. It is just the appearance of the trunks.

Q. Simply because they are square trunks and approximately of a certain size; is that it?

A. Yes, the trunks I saw were nearly twin trunks.

Q. Did you ever see anybody else have trunks very similar to those?

A. I never noticed them, no.

Q. As a matter of fact you would not have noticed these trunks had it not been you were coming here to testify in this case? Has not your mind been refreshed upon this? A. Not at all.

Q. Hasn't Mr. Wardell and Mr. Tidwell in-

(Testimony of Maud Fay.)

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A. I never noticed them, no.

Q. As a matter of fact you would not have noticed these trunks had it not been you were coming here to testify in this case? Has not your mind been refreshed upon this? A. Not at all.

Q. Hasn't Mr. Wardell and Mr. Tidwell in-

(Testimony of Maud Fay.)

structed you how to answer questions in this matter?

A. They have not. [121]

Q. Did they talk to you at all?

A. Not since before the Grand Jury investigation.

Q. Miss Fay, when you first came on the stand here, did you not testify you could identify one trunk but not both?

The COURT.—One of those that were there, she said.

A. I did not see this other trunk at all.

Mr. PRICE.—Q. Your answer was, it was one of those that was there?

A. It was one of those three; I identified that one over there.

Q. You say you have not talked to the officers at all since before you went to the Grand Jury?

A. Not more than to say how do you do.

Q. Prior to the time you went to the Grand Jury you talked with them, did you not?

A. Just one morning.

Q. Just one morning, and only one morning?

A. That is all.

Q. Whereabouts was that conversation?

A. At my home and at the Custom-house. Not with Mr. Tidwell and Mr. Wardell only at the Custom-house.

Q. Have you had any conversation with any other officers besides Mr. Wardell and Mr. Tidwell.

A. Mr. Smith.

Q. Has Mr. Smith instructed you how to answer the questions here? A. Not at all.

(Testimony of Maud Fay.)

Q. Miss Fay, sometime yesterday, in the witness-room of this court, in the presence of several of the witnesses who have been subpoenaed here in this case, did you not make the statement that the officers had told you exactly how to answer the questions?

Mr. SELVAGE.—To that I object unless it states the persons present that he calculates to call for impeachment, and the time and place where all this occurred.

Mr. PRICE.—In the presence of Miss Louise Lorraine and several other witnesses whose names I cannot now recall, did you not make that statement?

A. I did not. [122]

Q. Miss Fay, you say you never handled that valise, that grip? A. I never handled it, no.

Q. And you have just seen it in the room?

A. I saw it in the room frequently.

Q. Whereabouts in the room was it?

A. Generally on the dressing-table, as far as I can remember.

Q. Whereabouts was the dressing-table?

A. It was in one corner of the room; I cannot state just where.

Mr. PRICE.—That is all.

Mr. SELVAGE.—I now offer this trunk in evidence as being one of the trunks in the possession of the defendant Poole.

The trunk was here marked “U. S. Exhibit No. 26.”)

Testimony of G. R. Smalley, for the Government.

G. R. SMALLEY, called for the United States, sworn.

Mr. SELVAGE.—Q. Where do you reside?

A. San Francisco.

Q. What is your business or occupation?

A. Hotel clerk.

Q. Do you know the defendants here?

A. I know one of them.

Q. Which one.

A. Mr. Moore, the one with the glasses on.

Q. Where did you know him?

A. At the Hotel Alcazar.

Q. Are you one of those who was a clerk there at the time he was stopping at the hotel?

A. I was.

Q. How often did you see him?

A. Oh, about every day.

Q. Were you ever in his room. A. I was.

Q. Did you notice the furniture in his room and the paraphernalia he had himself?

A. Why, slightly, yes; never closely.

Q. How often did you see him going to and coming from his room?

A. Well, about every day; I could not say how many times a day.

Q. Was there any particular time of day he used to leave his room in the morning?

A. As a general rule not until around noon.

Q. Did he take anything with him or have any-

(Testimony of G. R. Smalley.)

thing with him when he [123] left the room at any time? A. Sometimes.

Q. What did he have?

A. Sometimes he had a black bag; I recollect once that he went out with a suit-case.

Q. How often did it occur that he went with a black bag; I mean approximately?

A. Well, I could not say approximately; it is pretty hard to state definitely how many times, there are so many people going in and out, but I have seen him going out several times with the black bag.

Q. For how long a period did he stop there?

A. I went to work there on the 31st of August and he went away on the 16th of September.

Q. Did you ever observe whether or not the grips or bags that he carried were heavy or light?

A. No, I could not say whether they were heavy or light.

Q. Could you tell by his appearance?

A. Well, he is a pretty strong man, he could carry a pretty heavy bag without showing it.

Mr. PRICE.—We ask that that go out, if your Honor please, as not responsive to the question.

The COURT.—Let it go out.

Mr. SELVAGE.—Q. Did you ever seen any indication that would tell you whether the bag was heavy or light? A. No, I cannot say that I have.

Q. Did you see Mr. Murphy there at all?

A. No, I have never seen Mr. Murphy that I know of until to-day, until this trial.

Mr. SELVAGE.—That is all.

(Testimony of G. R. Smalley.)

Mr. PRICE.—No cross-examination.

Mr. SELVAGE.—Q. I will ask you whether or not the bag was similar to the one that I show you here? A. Yes, sir.

Q. It was similar to that? A. Yes, sir.

Mr. PRICE.—Q. You have seen hundreds of similar bags, have you not? A. Possibly. [124]

Testimony of Louise Lorraine, for the Government.

LOUISE LORRAINE, called for the United States, sworn.

Mr. SELVAGE.—Q. Where do you reside?

A. At the Hotel Ray, in Oakland.

Q. Do you know the defendant, George Moore?

A. Yes, sir.

Q. Do you know him by any other name?

A. I do now.

Q. What other? A. George Poole.

Q. I will ask you whether or not he ever made you the present of a trunk?

A. Well, he was going to send me a trunk out he said, but—

Mr. PRICE.—Q. Just answer the question whether he did or did not?

A. He was going to give me a trunk, yes, sir.

Mr. SELVAGE.—Q. Did he give you the key to the trunk? A. Yes, sir.

Q. You say he was going to send it out to you?

A. Yes, sir.

Q. Where from?

A. I don't remember that he told me where from.

Q. Do you know whether the trunk was sent to

(Testimony of Louise Lorraine.)

you, or not? A. Well, I never received it, no, sir.

Q. What did you do with the key that was given to you?

A. I gave it to, I think it was Mr. Smith.

Q. Mr. Smith? A. Yes, sir.

Q. Would you recognize the key if you saw it?

A. No, sir, I would not.

Q. It was Customs Agent Smith you gave it to?

A. Yes, sir.

Mr. SELVAGE.—That is all.

Mr. PRICE.—No cross-examination.

Testimony of John W. Smith, for the Government.

JOHN W. SMITH, called for the United States, sworn.

Mr. SELVAGE.—Q. Mr. Smith, where do you reside? A. Oakland. [125]

Q. What is your business or occupation?

A. Customs agent.

Q. Do you know Louise Lorraine? A. Yes, sir.

Q. Do you know these defendants?

A. I do now.

Q. I will ask you whether or not you were ever given a key by Louise Lorraine? A. I was.

Q. Would you recognize the key?

A. Yes, sir, I have it here in my pocket (showing).

Mr. SELVAGE.—I now at this time offer in evidence the key just handed to me by Mr. Smith, the Customs Agent, and identified as the key that was given to Louise Lorraine by Mr. Poole, and then from Louise Lorraine to Mr. Smith.

Mr. PRICE.—No objection.

(Testimony of John W. Smith.)

(The key was here marked "U. S. Exhibit No. 27.")

Mr. SELVAGE.—I also demonstrate before the jury with that key that it is the key for this trunk, "U. S. Exhibit 26," and that it opens it.

Q. Did you ever see that trunk before?

A. Yes, sir.

Q. Where did you see it?

A. At the Alcazar Hotel.

Q. What did you do with it?

A. I opened it with the key that she gave me, and then took the trunk to the Customs-house.

Q. Where was the trunk at the time?

A. It was in the trunk-room in the Alcazar.

Q. Where was Louise Lorraine when she gave you that key? A. In her room.

Q. At the Alcazar? A. Yes, sir.

Q. Did you get any instructions as to what trunk it was?

A. Yes, I was told by the clerk that the trunk for room 21 was in the trunk-room, and the trunk was pointed out to me by the clerk.

Mr. PRICE.—We object to that, if your Honor please, as hearsay.

The COURT.—The objection is sustained. [126]

Mr. SELVAGE.—The only part I wish to remain in is that he was instructed where the trunk was, not what the clerk said to him.

Q. Mr. Smith, state whether or not you examined that trunk for the purpose of seeing what it contained. A. Yes, sir.

(Testimony of John W. Smith.)

Q. What did you find, if anything?

A. It was practically empty, but there was some little bit of opium scattered in the trunk, stuck on the sides of the trunk.

Mr. PRICE.—We object to that as the conclusion of the witness, your Honor please.

The COURT.—The objection is overruled.

Mr. SELVAGE.—Q. State whether or not you have had possession of a memorandum-book, a small red memorandum-book, or a black one, rather.

A. Yes, sir.

Q. Where did you get it?

A. I got it in the drawer of room 22, at the Alcazar Hotel, which was occupied by Mr. Poole.

Q. State whether or not there are any addresses in that book.

A. There is an address there of 30 Waverly Place; there is also another address, 112 East Washington Street, Stockton, which is the Foo Lung address, of which Louis Sang was the manager.

Mr. PRICE.—We object to that, your Honor. The witness is called to read an address from a book and he is now making a statement entirely aside from that. We ask that that go out.

Mr. SELVAGE.—I want to know who these people are, if he knows, and he has answered.

The COURT.—The motion will be denied.

Mr. SELVAGE.—Q. Where is 30 Waverly Place?

A. 30 Waverly Place is the place where Mr. Murphy was arrested, Wong Fat. It also has the telephone number of that place.

(Testimony of John W. Smith.)

Q. What is that telephone number?

A. It is "China 1386."

Q. Do you know whose handwriting that is written in—that book?

A. I cannot vouch for that. [127]

Q. Did you find any other memoranda?

A. We found some other letters. Mr. Stone has possession of them, that we got together.

Mr. SELVAGE.—At this time I will offer this book in evidence.

(The book was here marked "U. S. Exhibit No. 28.")

The WITNESS.—The name Foo Lung is in there; it is spelled backwards.

Q. I wish you would call the attention of the jury to how that name is spelled, and where it is.

A. O-O-F-G-N-U-L, 112 East Washington Street.

Q. Is that that Chinese address?

A. It is Foo Lung's address in Stockton. Here is another memorandum, 80 at 21.50 each, 1700. There are also a number of figures in different places here.

Cross-examination.

Mr. PRICE.—Q. Mr. Smith, did you attempt to unlock this trunk with any other key?

A. No—yes, I did, with several keys before I got the key to it.

Q. Did you attempt to unlock any other trunk with that key?

A. I never tried. It is a very difficult lock though to unlock.

(Testimony of John W. Smith.)

Q. What is there particularly peculiar about this trunk lock?

A. If I remember right, I think it is a Yale lock.

Q. Come down now and show me what is particularly peculiar about this lock?

A. Well, where lots of trunks can be opened with ordinary keys, it is not easy to open this trunk.

Q. Is not that an ordinary trunk-key?

A. It is for that kind of a lock.

Q. Don't you call that an ordinary trunk-key?

A. No.

Q. If this key was handed to you on a bunch of keys, could you pick that out as an extraordinary trunk-key? A. No, I could not.

Q. What is there extraordinary about that trunk lock? A. I think that is a Yale lock. [128]

Q. You think it is a Yale lock?

A. I think that I had a number of keys—it says “Yale & Towne” on it. Yale & Towne locks are not easy to unlock. I have a number of trunk-keys, but I have none of them that will unlock a Yale & Towne lock.

Q. Do you know that there are other keys that will unlock them?

A. I do not. I know that these locks are difficult to unlock.

Q. But you don't know that there are other keys that will unlock them? A. No, I do not.

Q. Don't you also know, Mr. Smith, that if you lose a trunk-key it is very easy to go to a trunk-store and get it replaced; you know that, don't you?

(Testimony of John W. Smith.)

A. You can do that with any lock.

Q. Then your contention is that this particular sort of a lock a key made for that lock will not unlock any other, and a key made for another lock will not unlock that? A. I would not say that.

Q. Now, come down here just one moment more: I ask you to examine that lower trunk; is it locked or unlocked? A. I know it is not locked.

Q. Just examine it, Mr. Smith, just for a moment; is that locked now or unlocked.

The COURT.—This man did not present himself as a lock expert; he has simply identified a key.

Mr. PRICE.—He identified a key, and he has said that this key was for this particular trunk.

Q. Don't you notice, Mr. Smith, that they key also unlocks the lower, trunk? A. Yes, sir, it does.

Q. There may be other Yale & Towne locks made in duplicate. A. I am no lock expert.

Q. Mr. Smith, have you interviewed any of the witnesses in this case?

A. Have I interviewed any of the witnesses?
[129]

Q. Yes, have you talked with them outside the courtroom? A. Oh, yes; I remember that.

Q. Can you state whether you have, or have not?

A. Whether I have talked with any of the witnesses? Yes, probably I have.

Q. With a view of influencing the testimony they were to give here? A. No.

Mr. DANFORD.—For the purpose of impeachment, your Honor, may I lay a foundation?

(Testimony of John W. Smith.)

The COURT.—Yes.

Mr. DANFORD.—Q. Mr. Smith, did you not speak to Mr. Sananes, a Spanish gentleman, in the Glen Hotel in this city, in room 412, on or about September 23, 1913, with only yourself, Sananes and a friend of yours who came with you to that place, did you not say substantially this while speaking of the defendants Murphy and Poole to Sananes: “You know these men have been handling opium and you can so testify”; and did he not say, “If I so testified it would be a lie”; and did you not then say, “Oh, you can so testify anyhow; they don’t care for you; they call you a Greaser”; and didn’t he reply, “I could not say that what you want me to say, and if they call me that they are bad boys, I am a Spaniard and not a Mexican.” Did not that conversation take place between you at that time?

A. Not to my recollection.

Q. Would you swear that it did not?

A. I think I can swear that it did not.

Testimony of John T. Stone, for the Government.

JOHN T. STONE, called for the United States, sworn:

Mr. SELVAGE.—Q. Mr. Stone, where do you reside? A. San Francisco.

Q. What official position do you hold with the Government? [130]

A. Special Deputy Surveyor of Customs.

Q. How long have you been in the employ of the United States? A. 15 years.

Q. Do you know these defendants? A. I do.

(Testimony of John T. Stone.)

Q. How long have you known the defendants?

A. Since about the 17th of September.

Q. State whether or not you were ever at the room that was occupied by Mr. Poole prior to his arrest.

A. I was.

Q. Did you find anything there? A. I did.

Q. What?

A. I found a telegram dated August 22d, at El Paso, and a letter dated the 2d of September.

Q. Have you those papers? A. I have.

Q. What room was it you found them in?

A. Room 222, Alcazar Hotel.

Q. Have you seen the handwriting of Mr. Murphy on hotel registers at other places? A. I have.

Q. State whether or not you identify the handwriting of this letter.

A. That is the handwriting of Mr. Murphy, to the best of my knowledge.

Q. Is it similar in every way? A. It is.

Q. Did you find anything else in that room?

A. Those are the only two pieces of correspondence that I found.

Q. This is the letter, is it, that you recognize as his handwriting? A. That is the letter, yes, sir.

Mr. SELVAGE.—I will now offer this letter in evidence. It reads as follows (reading).

(The letter was here marked "U. S. Exhibit No. 29.)

Q. This is the condition in which you found it?

A. That is the condition in which we found it.

Mr. SELVAGE.—I will call it to the attention of

(Testimony of John T. Stone.)

the jury so that they can see it and they can compare the handwriting with the others. They have seen the writing so often now that I think they [131] will be able to recognize it. This telegram reads as follows: (Reads.) (The telegram was here marked "U. S. Exhibit No. 30.")

Q. That is all you found in the room?

A. That is all.

Mr. PRICE.—No cross-examination.

Testimony of William Roberts, for the Government.

WILLIAM ROBERTS, called for the United States, sworn.

Mr. SELVAGE.—Q. Where do you reside?

A. 1338 Stevenson Street.

Q. What is your business? A. Blacksmith.

Q. Have you any other business in connection with your blacksmithing business?

A. Yes, sir, a stable business.

Q. Have you a room there where you accept and receive trunks, and such things?

A. Not as a custom, no, but I have plenty of room in the place, yes, sir.

Q. State whether or not you know these defendants?

A. I am acquainted with Mr. Murphy, slightly.

Q. Have you ever seen Mr. Moore? A. No, sir.

Q. With whom did you see Mr. Murphy?

A. A man by the name of Benton.

Q. Where does Benton reside?

A. I am not sure of the number, but it is on Stevenson Street.

(Testimony of William Roberts.)

Q. How far is it from your place of business?

A. About half a block.

Q. Do you recall this defendant, Mr. Murphy, leaving any trunks with you? A. No, sir.

Q. Did you ever receive any trunks belonging to him? A. No, sir, not that I know of.

Q. I should have said Mr. Benton. A. Oh, yes.

Q. Was Mr. Murphy with him? A. No, sir.

Q. You say you had trunks left with you belonging to Benton? A. Yes, sir. [132]

Q. State whether or not any of the trunks that are here were the trunks that were left with you?

A. Yes, sir, these two, I can identify them.

A. (Contg.) These two are so much alike, but I guess they are the trunks.

Q. You recognize the two, No. 4 and No. 5?

A. Yes, sir.

Q. And numbers 6 and 26 look like the trunks that you had? A. Yes, sir.

Q. What was done with them?

A. Well, on the day that they came in there, about 3 o'clock, Officer Head came into my place and opened them up.

Q. How long after they had been brought there to you? A. About 3 or 4 hours.

Q. Who brought the trunks in?

A. A man who is working for me, Mr. Baker.

Q. What is his name? A. Martin Baker.

Q. Who is the one who first spoke to you about taking these trunks to keep them? A. Mr. Benton.

Q. You were pretty well acquainted with Mr. Benton, were you?

(Testimony of William Roberts.)

A. Well, slightly; I have seen the man several times in two years.

Q. Do you know anything about how these trunks were moved?

A. The man who is working for me could give you better information about that.

Q. Do you know anything about a trunk going to the Alcazar? A. Only from what he said.

Cross-examination.

Mr. DANFORD.—Q. So far as you know, Mr. Benton is the man from whom these trunks you identify came? A. Yes, sir.

Q. And so far as you know Mr. Murphy had no knowledge of the trunks and had nothing to do with them? A. Not so far as I know, no, sir. [133]

Q. How often did you see Benton?

A. Well, possibly once or twice a week.

Q. Did you see him with Murphy more than once?

A. Yes, sir.

Q. How many times?

A. Well, I could not say; possibly 8 or 10 times, in the neighborhood, several times.

Q. Did you see anything unusual about those two young men being together, or were they young men—is Benton a young man?

A. Well, I guess about middle aged, 36 or 37 years of age.

Q. You did not see anything unusual about them?

A. No, sir.

Q. Nothing that attracted your attention as being usual? A. No, sir.

Testimony of Martin Baker, for the Government.

MARTIN BAKER, called for the United States, sworn.

Mr. SELVAGE.—Q. Mr. Baker, where do you reside? A. 1338 Stevenson Street, San Francisco.

Q. Do you know either of these defendants here?

A. I know one of them.

Q. Which one? A. The one to the left.

Q. Mr. Murphy? A. Yes, sir.

Q. How long have you known him?

A. About four months, I believe, or somewhere along there.

Q. Where did you know him?

A. I just seen him up on Stevenson Street and Duboce Avenue.

Q. With whom did you see him?

A. Charlie Benton.

Q. He is one of the defendants in this case—Benton. A. Charlie Benton.

Q. He is one of the defendants in this case—he is the same man? A. That is the man.

Q. Did you ever move any trunks for him?

A. For Benton?

Q. Yes. A. Yes, sir.

Q. Where did you get the trunks?

A. I got two up on Stevenson, [134] 1346a Stevenson Street, and I got two down at the Hotel Thames.

Q. What two did you get? I will ask you if you recognize any of these trunks here.

A. Yes, sir, that long one there.

(Testimony of Martin Baker.)

Q. Any others? A. And that one over there.

Q. Numbers 4 and 5?

A. I got them down at the Hotel Thames.

Q. You got those at the Hotel Thames?

A. Yes, sir.

Q. Now, do you recognize the other trunks?

A. Yes, sir.

Q. Where did you get those?

A. 1346 Stevenson Street.

Q. Are those the ones you got at Benton's place?

A. Yes, sir.

Q. Who told you where to take these trunks?

A. Charlie Benton.

Q. Where did he tell you to take them?

A. He told me to take one over to the store at 61 Duboce and the other one to take up to the Alcazar Hotel.

Q. Did you take the trunk to the Alcazar Hotel?

A. Yes, sir.

Q. What trunks did you store at 61 Duboce?

A. The top one.

Q. You stored it. Where did you store it?

A. 61 Duboce.

Q. Any other?

A. I took the other one to the Alcazar Hotel, the one down below.

Q. The bottom one you took to the Alcazar Hotel?

A. Yes, sir. I stored those two at 61 Duboce.

Q. How do you recognize the difference between those trunks?

A. One was a little larger than the other one.

(Testimony of Martin Baker.)

Q. What was done with the other two trunks?

A. I took them from the Thames Hotel and took and stored them up at 61 Duboce.

Q. I understand you stored three of those trunks at 61 Duboce Street and left the fourth one at the Alcazar Hotel? A. Yes, sir.

Q. Which one did you take to the Alcazar Hotel? The large one or the smaller one?

A. The smaller one of the two on that side. (Pointing.) [135]

Cross-examination.

Mr. DANFORD.—Q. All of the transactions and all of the business you had with these trunks was for the defendant Benton? A. Yes, sir.

Redirect Examination.

Mr. SELVAGE.—Q. From whom did you get those two trunks that you got at the Thames Hotel?

A. Benton was there himself and helped me down with them. I got them from him.

Q. Was there any other person there?

A. There was a lady there running the elevator; that is all I seen.

Q. When you got the other trunks from Mr. Benton's place, who was there?

A. There was a lady there.

Mr. DANFORD.—Q. Do you know where this man Benton is? A. No, sir.

Mr. SELVAGE.—Q. Who were you to deliver the trunk to at the Alcazar? A. To Mr. Moore.

Q. Mr. Moore.

Q. Mr. Moore? A. That is the name that I got.

(Testimony of Martin Baker.)

Q. When you went to the Alcazar, did you find Mr. Moore? A. No, sir.

Q. Why?

A. The clerk told me that he was asleep and he would not let me wake him up.

Testimony of P. O. Huffaker, for the Government.

P. O. HUFFAKER, called for the United States, sworn.

Mr. SELVAGE.—Q. Where do you reside?

A. In Oakland.

Q. Are you in the employ of the United States Government? A. Yes, sir.

Q. State whether or not you know the defendant Poole. A. I do.

Q. Had you any occasion to follow him after he reached this city? A. Yes, sir. [136]

Q. When was it? A. That was on October 5th.

Q. On the 5th of October last? A. Yes, sir.

Q. Where did you follow him from and to where?

A. Do you mean every place that he went, or just a general idea?

Q. Just a general idea.

A. He went up to a few places around the Hotel Kern and then went out to a place on Stevenson Street.

Q. Who went with him to Stevenson Street?

A. Miss Lorraine.

Q. To what place did they go on Stevenson Street?

A. They went to a place in about the middle of the block, a big apartment house there, 1346a Stevenson

(Testimony of P. O. Huffaker.)

Street, as near as I could tell.

Q. Do you know who lives there?

A. I have been told that—

Mr. PRICE.—We object to what the witness has been told.

Mr. SELVAGE.—Q. Did you make any inquiry there? A. No, I made no inquiry.

Mr. SELVAGE.—That is all.

Mr. PRICE.—No cross-examination.

Mr. SELVAGE.—That is our case.

(A recess was here taken until 2 P. M.)

AFTERNOON SESSION.

Mr. SELVAGE.—May it please the Court: I now move to admit the different matters in evidence here that have been marked for the purpose of identification—some of them have gone in, but the exhibits have been marked from 1 to 30.

The COURT.—Do you know which are in evidence and which have been marked for identification?

The CLERK.—I can call off a list. The first is a deposit slip with some writing on it; the keys; a package of papers and a [137] small memorandum-book for identification; a long trunk for identification; and another trunk, No. 5; the labels; deposit slips, with writing thereon; a yellow tag; a card; a card; a card; a Chinese book; page of hotel register, and that also introduced as an exhibit; baggage-check No. 7282; a second baggage-check of the same number; a letter dated El Paso, Texas, May 19th which was introduced in evidence as an exhibit. All the rest were marked for identification.

(Testimony of P. O. Huffaker.)

Mr. PRICE.—We object to anything being admitted in evidence not connected with the defendants and not connected with the *corpus delicti* in this case.

The COURT.—The objection is overruled.

Mr. PRICE.—We note an exception.

Mr. SELVAGE.—That is our case.

Mr. PRICE.—If your Honor please, at this time we desire to interpose a motion in this case and will ask your Honor that the jury be excused while the motion is interposed and argued.

The COURT.—The motion will not be argued; you may make the motion.

Mr. PRICE.—We make a motion that your Honor instruct this jury. I understand your Honor's ruling is that you will not exclude the jury while this motion is being made.

The COURT.—No.

Mr. PRICE.—We move your Honor at this time that your Honor instruct the jury to acquit these defendants for the reason that the prosecution has not established a *prima facie* case. We are prepared to argue that motion.

The COURT.—The motion will not be argued; it will be denied.

Mr. PRICE.—We note an exception.

Testimony of Louie Sang, for the Defendants.

LOUIE SANG, called for the defendant, sworn.

(Dr. GARDNER acted as Interpreter.) [138]

Mr. PRICE.—Q. Do you remember testifying here yesterday? A. I do.

Q. Do you remember testifying to sending \$300 to

(Testimony of Louie Sang.)

Mr. Poole at El Paso? A. I do.

Q. Did you receive any opium in return for that \$300?

A. \$300 formed the last payment; when George was here he said, "I have got some opium over on the other side that I can let you have, you let me have \$300 and I will let you have 12 cans." When he went back he telegraphed me and I sent him the money.

Q. Did you get the opium—did you get any opium from him?

A. Then afterwards I saw no trace of either him or the opium and he still has my money for the opium.

Q. And you never got the opium?

A. Not the last time.

Q. When did you ever buy any opium from Mr. Poole—the last time?

A. February of this year when George came with a friend and saw me at Stockton; on that occasion I bought the last amount of opium from him.

Q. Is that the last time that you bought any opium from him?

A. That was the last time, and then I sent him the money in March.

Q. Did you buy that from Mr. Poole, or did you buy it from a friend of his, someone else?

A. I don't know whether he or his friend owned the opium, but my transaction was with him.

Q. Now, Louie Sang, didn't you state to me in the corridor of this courtroom, at about half-past one

(Testimony of Louie Sang.)

o'clock to-day, in the presence of Mr. Sananes, that the last time you bought any opium from Mr. Poole was in 1909 when you were Manager of the Lee Yung Chung Company?

A. You did not understand me right. I thought you asked me, since what time I became with him, and I said my first acquaintance with him was over opium transactions, and that was about 1909.

Q. I would like to put one question direct to the witness Louie Sang, you speak English, don't you?

A. (Through the Interpreter.) [139] I do speak some English, but I am afraid if I speak English altogether I might make a mistake.

Q. Let us try it and see how you get along with English. Now, Louie Sang, out in the corridor of this courtroom to-day did I not ask you this question: "When is the last time you bought any opium from Mr. Poole," and didn't you say "1909"? Do you remember counting on your fingers? Answer in English now, please.

The INTERPRETER.—He says, "I would rather have that explained to me in Chinese.

Q. Louie Sang, didn't you talk English with me this afternoon? Answer in English.

A. (Through the Interpreter.)—What I mean to convey to you at that time was that 1909 was also the last time that he and I were together and exchanged opium.

Q. That was the last time you were together and exchanged opium. Louie Sang, did I talk to you in English to-day?

(Testimony of Louie Sang.)

A. (Through the Interpreter.) - Yes, sir.

Q. And didn't you talk to me in English?

A. Yes, sir.

Q. Why don't you do it now?

A. When I talk in the presence of many people I might get confused speaking in English.

Q. Did you ever buy any opium from Mr. Murphy? A. No.

Mr. PRICE.—Take the witness.

Mr. SELVAGE.—That is all.

Testimony of B. M. Sananes, for the Defendants.

B. M. SANANES, called for the defendants, sworn.

Mr. DANFORD.—Q. Did you hear a conversation between Louie Sang, when you were present, and together with Mr. Price in the corridor of this building at about 1:30 to-day, and if you did, did this conversation take place; "Mr. Price to Louie Sang: When was the last time you bought opium?"—

Mr. McKINLEY.—One moment, if your Honor please. We object [140] to the form of this question.

Mr. SELVAGE.—This is an effort to impeach his own witness.

Mr. DANFORD.—We will show that he made those statements, if your Honor please, in the corridor, at 1:30 to-day. That is the reason he was called and put on the stand. We only want the facts to come before the jury. We want to show that he made those statements.

The COURT.—The rule is that if you put a witness on the stand you cannot impeach him.

(Testimony of B. M. Sananes.)

Mr. DANFORD.—This Chinese witness took the stand and gave testimony that required us recalling him and before recalling him *and before recalling him* to the stand we talked to him and he then made declarations which proved on the witness-stand as a witness for the defendant to be a surprise to us.

The COURT.—You may be permitted to go this far: to explain the reason why the witness was put on the stand by you, you may elicit from the witness the statements made by the witness Louie Sang to you in the corridor or wherever they were made, but the jury must understand that they cannot take as true the declarations which you may prove that the witness made in the corridor.

Mr. DANFORD.—Independent of other circumstances—is that the idea of the Court?

The COURT.—Yes.

Mr. DANFORD.—Yes, your Honor, that is our understanding.

The COURT.—That is to say, you cannot introduce before the jury through this witness declarations of Louie Sang in the corridor for the purpose of the jury taking the statement made by him there as true. That is all; but only to show that you were surprised when you put him on the stand.

Mr. McKINLEY.—If your Honor please, I have one further objection to the form of the question put by counsel—it was not [141] quite completed, but the form of it will show what the intent is. I object to it upon the ground that the question is leading inasmuch as counsel was proceeding to give

(Testimony of B. M. Sananes.)

the words which he wished the witness to confirm or deny had been used in that conversation.

The COURT.—Yes, I think you had better ask the witness to state what he heard the witness Louie Sang state.

Mr. DANFORD.—Q. You have heard a conversation, at about 1:30, in the corridor of this court, between Louie Sang and Attorney Price, and in your presence? A. Yes, sir.

Q. Will you please tell the Court and the jury what that conversation was?

A. Mr. Price asked this Chinaman how long since Mr. Moore—how long since he bought opium from Mr. Moore: He said, “Long, long time ago.” He said, “How long ago?” He said, “Oh, long, long time ago”—he said two or three times, “Long, long time.” He said, “How long a time? Tell it in Chinese.” He repeated two or three times, “Long, long time ago”; afterwards he said 1909; Mr. Price told him to write it on a piece of paper, he told him to write it on some paper.

Q. Did he write it?

A. I believe he did; I didn't pay attention to that.

Q. Did he say how many years, or when?

A. 1909.

Q. That is all on that matter. I will ask you now, where did you room or where did you live on or about September 23, 1913? A. The Glen Hotel.

Q. What room?

A. Room 412—no, I believe I had 312 then; I changed.

(Testimony of B. M. Sananes.)

Q. Did you meet, on or about the 23d of September, 1913, this Mr. Smith who just arose in the courtroom here, in that room?

A. Yes, sir, there were two gentlemen came to see me there.

Q. Is he one of them?

A. He is one of them, yes, sir.

Q. And there was another gentleman who came with him? A. Yes, sir.

Q. Now, at that time and at that place, did Mr. Smith say to you— [142]

Mr. McKINLEY.—We object. I make the same objection to the form of this question as I did to the last.

The COURT.—This is an impeaching question.

Mr. McKINLEY.—And I want to make the further objection at this time upon the ground that it is an attempt to impeach a witness on a collateral matter brought out on cross-examination and by which counsel is bound.

The COURT.—No, it is not a collateral matter; it is a declaration tending to show the interest of the witness.

Mr. McKINLEY.—Oh, if that is the idea we will not make any objection.

Mr. DANFORD.—Q. When you and he were present, in the City and County of San Francisco, State of California, at the Glen Hotel, in your room 412, on the 23d of September, 1913, did he say to you, “Sananes, you know these men have been handling opium and you can so testify,” and did you not say,

(Testimony of B. M. Sananes.)

“If I so testified it would be a lie”; and did he not then say, “Oh, you can so testify anyhow; they don’t care for you; they call you a Greaser,” and did you not reply, “I could not say what you want me to say, and if they call me that they are bad boys. I am a Spaniard and not a Mexican”—is not that substantially what took place in conversation between you and them? A. About that.

Cross-examination.

Mr. SELVAGE.—Q. Where do you reside?

A. At the present time?

Q. Yes. A. At the Glen Hotel.

Q. How long have you been living there?

A. Pretty near two and a half months or three months.

Q. What is your occupation?

A. At the present time I am a cigar drummer.

Q. How long have you been a cigar drummer? [143]

A. This time I have been for the last seven months, but I was eight years before that.

Q. In the meantime, from the time you were a cigar drummer in the first instance until the present occupation as a cigar drummer what were you doing?

A. I was manager of the bull-ring at Juarez, Mexico.

Q. Manager of the bull-ring?

A. Yes, and assistant manager.

Q. Are you doing business with these men?

A. No, sir.

(Testimony of B. M. Sananes.)

Q. How did you get acquainted with them?

A. I knew them in El Paso; in El Paso and Juarez.

Q. How long did you know them there?

A. I know them for a while, I can't tell exactly; I just seen them around there; I didn't talk very much to them.

Q. You said that that was about what Smith said to you; did he ask you to tell a falsehood?

A. A falsehood?

Q. Yes. A. No.

Q. He did not ask you to tell a falsehood?

A. I do not know what you call a falsehood.

Q. A lie; did he ask you to tell a lie?

A. I don't know; I can tell you what he asked me.

Q. What was it he asked you?

A. He asked me if I know these people and I tell him yes; and he said, "What are you doing?" and I said I was manager of the bull-ring there. He said, "You know they are handling opium?" I said, "I don't know." He said, "You can testify to it." Both of them were asking questions. He said, "Could you testify against them, and that you know they are handling opium?" I said, "No, if I do I would be *lieing* about it." They said, "Well, they are not your friends; they call you a Greaser." I said, "If they call me a Greaser they are bad; I am not a Greaser; I was born in Spain." They asked me if I knew a gentleman by the name of Dick Smith. I said, "Yes, I know he had a saloon there, and I had some [144] business with him in the bull-ring because we rented him the bull-ring for a prize-fight.

(Testimony of B. M. Sananes.)

He asked me if he was here in town. I said, "I don't know." He said, "If he comes around will you let me know?" and he gave me his card, and told me to call him up if I heard of Dick Smith.

Q. And that was what conversation you had with Smith?

A. Well, maybe I had a few words more.

Redirect Examination.

Mr. DANFORD.—Q. What has been the extent of your education in Spain, how many years?

Mr. SELVAGE.—I object to that as immaterial.

Mr. DANFORD.—It is on the subject matter of the term "Amapol."

Mr. SELVAGE.—All right, I will withdraw my objection.

Mr. DANFORD.—Q. How many years' education did you have in Spain? A. About 8 or 9 years.

Q. Are you what you would call well educated in the Spanish language?

A. I believe I am fairly educated.

Q. You are thoroughly familiar with the Spanish language? A. Yes, sir.

Q. What is meant by the term "Amapol" in Spanish?

A. That word don't exist in Spanish; it is not a word in Spanish.

Q. What is meant by the term "Amapola"?

A. That is a flower.

Q. What kind of a flower?

A. In English it is a corn-flower.

Q. Has it any reference at all from the standpoint

(Testimony of B. M. Sananes.)

of Spanish language to opium, in Spanish?

A. If it does I don't know it. I never studied that.

Q. How do you pronounce "opium" in Spanish?

A. "Opio."

Recross-examination.

Mr. SELVAGE.—Q. Does Amapola in Spanish mean poppy?

A. I don't know what poppy means.

Q. You don't know what poppy means?

A. No. [145]

Mr. DANFORD.—He does not know what it means in English?

A. I am not very well acquainted with English.

Q. You don't know what the poppy plant is?

A. No.

Q. You don't know what the poppy flower is?

A. No. Maybe I know it, but in English I don't know what it means.

Q. What dictionary did you get that from?

A. What dictionary,—what do you mean?

Q. What dictionary did you get the definition of "Amapola" from?

A. I didn't get it from any dictionary; I know it.

Q. Do you get any of your language from the dictionary? A. Yes.

Q. Do you understand what I mean?

A. No, sir.

Q. Do you consult a dictionary when you want to learn what a word means in Spanish? A. Yes.

Q. Have you consulted any dictionary to find out

(Testimony of B. M. Sananes.)

what the word "Amapola" means?

A. No, sir, I know it.

Q. How do you know it?

A. Because I know what "Amapola" is. It is a very common word in Spanish; it is a flower.

Q. And if the Spanish dictionary says it means poppy, then the dictionary is wrong?

A. I don't know; I never seen the dictionary in English and Spanish. In the Spanish dictionary they do not say what the word means in English. In Spanish the word don't exist. I don't know what it is in English.

Testimony of Arthur Heatherly, for Defendants.

ARTHUR HEATHERLY, called for the defendants, sworn.

Mr. DANFORD.—Q. What is your name?

A. Arthur Heatherly.

Q. Where do you live? A. Oakland.

Q. What is your business?

A. Clerk of the Hotel Ray.

Q. Are you acquainted with the Chinese known as Louie Sang? A. Yes, sir.

Q. Are you acquainted with this defendant here, Mr. Poole? A. Yes, sir.

Q. And have you seen this distinguished gentleman before? A. Yes, sir. [146]

The COURT.—Which distinguished gentleman?

Mr. DANFORD.—I was pointing to counsel, your Honor.

Q. Did you hear a conversation last night between Louie Sang, the Chinese, and this defendant Poole?

(Testimony of Arthur Heatherly.)

A. Yes, sir.

Q. Was that whole conversation in the English language? A. Yes, sir.

Q. Will you please tell the Court and the jury what it consisted of?

A. Mr. Poole asked the Chinaman when he last bought opium; the Chinaman said in 1909; and Mr. Poole asked him what month, and he said in November or December, he did not remember just which. I think that is all that was said about buying opium. Something was said about sending for opium again but he did not get it—later.

Q. But Poole did ask him in your presence when last Sang did buy opium from him Poole, and he did answer in November or December, 1909?

A. Yes, sir.

Q. And that was all in the English language?

A. In the English language.

Q. Did you have any difficulty in understanding the Chinese? A. No, sir, I did not.

Q. He spoke fluently?

A. Well, he spoke plainly, so you could understand him.

Cross-examination.

Mr. SELVAGE.—Q. What did you say your name was? A. Arthur Heatherly.

Q. What is your business?

A. Clerk of the Hotel Ray.

Q. How long have you been there?

A. Three months.

Q. Are you acquainted with these defendants?

(Testimony of Arthur Heatherly.)

A. Yes, sir.

Q. Where did you become acquainted with them?

A. I knew Mr. Poole in El Paso.

Q. How long ago did you know him in El Paso?

A. I expect 17 or 18 years ago; something like that, I am not sure. [147]

Q. Did you continue your acquaintance with him until the present time?

A. I have not seen George much in the last 10 or 11 years until he came out here.

Q. You have not seen him much; you have seen him here though since he came? A. Yes, sir.

Q. How long have you been here?

A. I have been in California nearly two years.

Q. How often have you seen Poole in that time?

A. A great many times.

Q. Where were you located?

A. I was working in San Francisco part of the time.

Q. What place,—what were you doing?

A. I was working for the Blum Advertising Company.

Q. What relations had you with him during that time? A. Nothing only a friend.

Q. Nothing but friendly? A. Yes, sir.

Q. Where did you meet him?

A. Met on the street, and sometimes around cigar-stores, and sometimes in saloons.

Q. Did you and he live at the same place?

A. No, sir.

Q. Did you know what business he was in?

(Testimony of Arthur Heatherly.)

A. No, sir.

Q. You knew he was in the opium business when you knew him in El Paso, did you not?

A. No, sir.

Q. You didn't know what business he was in?

A. He was just a boy when I knew him in El Paso.

Q. When you knew him here, did you know he was in the opium business? A. No, sir.

Q. He didn't tell you? A. No, sir.

Q. And you didn't know what business he was in?

A. No, sir.

Q. Did it ever occur to you to ask him what business he was in?

A. No, sir; I thought he was in the race-horse business. [148]

Q. Did he have plenty of money?

A. He seemed to make bets at the races; that is all I knew about him.

Q. Did he stop at any hotel that you were clerking in? A. He is stopping now at the Hotel Ray.

Q. At the hotel you are clerking in?

A. Yes, sir.

Q. Under what name? A. George Poole.

Q. Did he ever sign the name of Spencer?

A. No, sir.

Q. Did he ever sign the name of Moore?

A. No, sir.

Q. Did you ever know him under those names?

A. No, sir.

Q. And you have known him for two years in San

(Testimony of Arthur Heatherly.)

Francisco and never asked him what his business was?

A. I don't think he has been here—I think only about a year since I first met him here; I don't suppose it is quite that long.

Q. And you didn't ask him during all that time what business he was in?

A. I thought he had horses at Juarez. That was my understanding.

Q. What made you understand that?

A. Well, he was playing the races; that is all he seemed to be doing.

Q. Playing races in San Francisco during the last year? A. I think so.

Q. Whereabouts? Whereabouts was he playing races in San Francisco during the last year?

A. Well, that might put somebody else in.

Q. That is all right? A. I cannot say.

Q. Whereabouts was he playing races in the last year in San Francisco.

Mr. DANFORD.—By “playing” do you mean betting on races?

Mr. SELVAGE.—I am using his own language?

Mr. PRICE.—Answer the question?

A. Well, at a cigar-store or two on Ellis Street.

Mr. SELVAGE.—Q. Tell me the names of the places? A. The Gastronomic Club. [149]

Q. And what cigar-stores?

A. I don't remember the names of the cigar-stores; I don't know them; they are located on Ellis Street.

(Testimony of Arthur Heatherly.)

Q. How did you come to know that he was playing the races there?

A. I was up there and saw him play.

Q. Were you playing the races too? A. No, sir.

Q. But you were there and saw him playing the races? A. Yes, sir.

Q. How long since you saw him playing the races the last time? A. It must be 4 or 5 months.

Q. And because he was betting on the races there was the only reason you thought he was in the race-horse business?

A. Well, I never asked him his business.

Q. How did you come to be listening to the story of Louie Sang? A. I went up there with Moore.

Q. Did he ask you to go there and listen to it?

A. He did not ask me to go up there; he said, "Come on and take a walk with me."

Q. When he was talking with Louie Sang, how did you happen to be there?

A. I went up there with Mr. Moore.

Q. Did he ask you to listen to the conversation?

A. No.

Q. And he asked the questions, did he?

A. Yes, sir.

Q. Were you subpoenaed as a witness?

A. No, sir.

Q. You came of your own accord here, did you?

A. Yes, sir.

Redirect Examination.

Mr. DANFORD.—Q. In other words, Mr. Moore simply took you there and you listened to the con-

(Testimony of Arthur Heatherly.)

versation,—you considered you were listening to something to testify to; is that correct?

A. Yes, sir.

Q. And he asked you to come and testify to what you heard? A. Yes, sir.

Q. And you volunteered to come? A. Yes, sir.

Q. He offered you no consideration of any kind, did he? A. No, sir.

Mr. PRICE.—That is the case for the defense.

[150]

Testimony of E. E. Enlow, for the Government.

E. E. ENLOW, called for the United States in rebuttal, sworn.

Mr. SELVAGE.—Q. What is your name?

A. E. E. Enlow.

Q. What position do you occupy with the Government, if any? A. Inspector of Customs.

Q. Do you know John Smith? A. I do.

Q. Do you know the witness who testified here for the defense, Sananes?

A. I saw him once before to-day.

Q. Where did you see him?

A. I think it was the Grand Hotel.

Q. State whether or not you were with Mr. Smith at the time you had the conversation with him that he described upon the stand. A. Yes, sir.

Q. What was the conversation that took place between Mr. Smith and the witness?

A. Well, Mr. Smith tried to find out whether he knew these men and he said yes, he knew those men, he got acquainted with them in Juarez when he was

(Testimony of E. E. Enlow.)

bull-fighting there, and he told us that he didn't know anything about them more than that.

Q. Did Mr. Smith on that occasion or did you try to influence him to tell anything that was not true?

A. We did not.

Q. Did you at that time or did Mr. Smith tell him that these men would throw him down, or that they called him a Greaser, and he said that he could not testify to anything against them because it would be false; was there any question of that kind?

A. I have no recollection of any talk of that kind.

Q. You don't recollect any talk of that kind?

A. No, sir.

Q. Would you remember it? Why would you not remember it, if there was any?

A. I would remember it if he asked him to state anything that was not true.

Q. Did he on that occasion ask him to state anything that was not true? A. He did not.

Q. Did he ask him to make any statement whatever against these defendants in order to help the Government, except what was true? [151]

A. He did not.

Mr. SELVAGE.—That is all.

Mr. DANFORD.—That is all.

Mr. SELVAGE.—The Government rests.

Charge to the Jury.

The COURT.—This charge, gentlemen, is one of conspiracy in two counts, the first count being substantially a conspiracy for knowingly and unlawfully importing opium into the United States from Mexico

by way of El Paso, and, the second count is substantially for the alleged offense of conspiring wilfully, unlawfully and knowingly to receive, conceal and facilitate the transportation and concealment after importation of opium referred to in the first count.

The section denouncing the offense of conspiracy is as follows:

“If two or more persons conspire to commit any offense against the United States, and one or more of such parties do any act to effect the object of the conspiracy, each of the parties will be punished as therein provided.”

The indictment here charges, first, the conspiracy, and then the doing of certain acts to effect the purpose thereof. These acts, broadly speaking, are, first, the importation of opium from Mexico by way of El Paso to San Francisco; second, the delivery to Chang Kow of certain contraband opium; third, the taking of certain trunks for smuggling opium from 1346a Stevenson Street to 61 Duboce Avenue, in this city; fourth, the purchase of tickets from Trinidad, Colorado, to San Francisco, and the payment of excess baggage on trunks containing opium to San Francisco. It is essential that both the conspiracy and the doing of one or more of these acts [152]. in furtherance thereof be established before the defendants can be convicted; it is not necessary, however, that all of the overt acts alleged shall be proved. It is sufficient to prove any one of them, if done to effect the purpose of the conspiracy charged.

A conspiracy is a combination of two or more by some concert of action to accomplish some criminal

or unlawful purpose, or some purpose, not in itself criminal or unlawful, by criminal or unlawful means.

The Act of February 9, 1909, provides, "that after the first day of April, nineteen hundred and nine, it shall be unlawful to import into the United States opium in any form or any preparation or derivative thereof; Provided, that opium and preparations and derivatives thereof, other than smoking opium or opium prepared for smoking, may be imported for medical purposes only, under the regulations which the Secretary of the Treasury is hereby authorized to prescribe."

Sec. 2 provides, "that if any person shall fraudulently or knowingly import or bring into the United States, or assist in so doing, any opium or any preparation or derivative thereof contrary to law, or shall receive, conceal, buy, sell, or in any manner facilitate the transportation, concealment, or sale of such opium or preparation or derivative thereof, he shall be punished as provided."

The Act further provides, that whenever on trial for a violation of this section, the defendant is shown to have, or to have had, such possession shall be deemed sufficient evidence to authorize conviction unless the defendant shall explain the possession to the satisfaction of the jury.

The Court instructs the jury that evidence in proof of conspiracy will generally be circumstantial, and it is not necessary, [153] for the purpose of showing the existence of the conspiracy, for the Government to prove that the defendant and some other person or persons came together and actually agreed

upon a common design or purpose, and agreed to pursue such common design and purpose in the manner agreed upon. It is sufficient in such common design and purpose is shown to your satisfaction by circumstantial evidence.

While it is necessary, in order to establish the existence of a conspiracy, to prove a combination of two or more persons by concert of action to accomplish a criminal or unlawful purpose, yet it is not necessary to prove that the conspirators came together and entered into a formal agreement to effect such purpose; but such common design may be regarded as proved if the jury believe from the evidence that the parties to such conspiracy were actually pursuing in concert the common design or purpose, whether acting separately or together, by common or different means, provided they all were leading to the same unlawfully result.

If you find from the acts of the parties, as proven, and from all the facts and circumstances in evidence, believe, beyond a reasonable doubt, that the defendants did pursue the common object of importing, or concealing the opium as charged in the indictment, and by the same means, one performing one part, and another another part, so as to accomplish the common object, then you will be justified in the conclusion that the defendants were engaged in a conspiracy to effect that object. It is not necessary to show that the conspiracy, if proved, originated at the exact time charged in the indictment. While it is necessary, in order to establish a conspiracy, to prove a combination of two or more persons, by concerted

action to accomplish the criminal or unlawful purpose alleged in the indictment, yet it is not necessary to prove that the parties ever came together and entered into any [154] formal agreement or arrangement between themselves to effect such purpose; the combination, or common design, or object, may be regarded as proved. If you believe from the evidence beyond a reasonable doubt, that the parties charged were actually pursuing in concert, the unlawful object stated in the indictment, whether acting separately or together, by common or different means; providing all were leading to the same unlawful result.

In this case four defendants named and others unknown have been jointly indicted for the crime of conspiracy and two of them are being jointly tried for that offense. The Court instructs the jury that a conspiracy cannot exist when only one person is concerned, but two or more persons must participate in such alleged conspiracy to make it a crime.

If you find from all the evidence that only one defendant was concerned in the acts charged in the indictment, then you must find the defendants not guilty. If you find that the acts charged in the indictment were committed by one defendant only and none of the other defendants nor any other person took part in such acts or aided or assisted in them, and that such acts were not done pursuant to a common design among them, it will be your duty to return a verdict of not guilty in favor of both the defendants.

Mere knowledge of the existence of a conspiracy,

on the part of any of the defendants does not make that person a party to such conspiracy, but the evidence must show beyond a reasonable doubt, and to a moral certainty, that such defendant not only knew of the conspiracy, but participated in such conspiracy, and, if you do not so find from the evidence, you must acquit.

If from the evidence the jury believe that the defendants, or [155] either of them may have had any transactions involving the handling of opium in a foreign country and believe that such transactions were not continued in the United States as alleged in the indictment you must acquit the defendants.

The mere presence of opium in the specimens presented for your consideration does not necessarily prove that, if the jury concludes that such specimens were from opium, that such opium was imported unlawfully from Mexico by way of El Paso into the United States as charged in the indictment.

If you find that contraband opium was in the possession of the defendants, or either of them, in pursuance of a conspiracy, that fact is sufficient to establish the overt act of having such opium in his possession, unless explained by the defendant.

It is your duty under the law when examining or deliberating upon the exhibits of any kind to give close attention to the testimony concerning each specific exhibit.

If you find from the evidence and believe that it is established beyond a reasonable doubt that one of the defendants other than the two defendants on trial is the person solely responsible for the presence in the

case of any exhibits and further believe that the defendants on trial had no guilty knowledge of any of the transactions of the said defendant not on trial you should acquit the defendants.

It is the legal right of the defendants to refrain from giving testimony and the fact that they do or do not give testimony should be ignored by the jury.

In the matter of considering expert testimony great care and caution is required and witnesses testifying as experts should not be given any greater credibility for any of their testimony [156] which may not be technical than would be given to a witness who is not an expert in giving the same kind of evidence.

It is a well-settled rule in criminal law that the acts of an accomplice are not evidence against the accused, unless they constitute a part of the things or matters accompanying and incident to an act, transaction or event, and occur during the pendency of the criminal enterprise, and are in furtherance of its object.

If you find that a conspiracy was established, the act or declaration of any defendant during its continuance and in furtherance of its object is the act or declaration of all of the parties to the conspiracy.

The fact that a co-defendant was standing or passing by and saw a crime committed, if a crime was committed, is not of itself evidence of a conspiracy.

Any admissions or declarations of a co-conspirator made after the consummation of a conspiracy are not to be considered by the jury against anyone except the person making them.

If the jury believe that the acts of the individual defendants were done by them, but without agreement or concert with each other, the *the* defendants cannot be said to be guilty of conspiring to commit the acts which are charged to have been committed by them.

While it is permissible in the Federal Courts to convict upon the uncorroborated testimony of an accomplice, you are instructed that before convicting the defendants on the uncorroborated testimony of an accomplice or accomplices, you should view such testimony with great care and caution. The testimony of an accomplice, therefore, ought to be viewed with distrust, and the evidence of the oral admissions of a party with caution. [157]

The defendants are clothed with the presumption of good character and this presumption of good character is their right, to which the defendants are entitled and of which the defendants cannot be deprived under the law.

If any witness examined before you has wilfully sworn falsely as to any material matter it is your duty to distrust the entire testimony of such witnesses.

Before you can convict the defendants in this case, it must appear, from the evidence, beyond a reasonable doubt, that the defendants, and not somebody else, are guilty of the offense charged in the indictment. It is not sufficient that the evidence shows, if it does so show, that the defendants or somebody else committed the crime, nor that the probabilities are that the defendants and not somebody else com-

mitted the crime, unless those probabilities are so strong as to remove all reasonable doubt as to whether the defendants or someone else is the guilty party; and it is a rule of law that although it may be positively proved that one of two or more persons committed a crime, yet if there is any reasonable doubt as to which is the guilty party, all must be acquitted.

So far as the identity of the defendants is concerned, if you believe from the evidence and the circumstances proved, that there is a reasonable doubt whether a witness or witnesses might not have been mistaken as to the defendants' identity, then you would not be authorized to convict the defendants; unless the corroborating circumstances tending to establish their identity are such as, with other testimony, produces a degree of certainty in the minds of the jury so great that they can say that they have no reasonable doubt of the identity of the defendants.

The law presumes the defendants to be innocent of the [158] crime charged, and this presumption continues in their favor throughout the trial, step by step; and you cannot find the accused guilty of any of the crimes charged in the indictment unless the evidence in the cases satisfies you beyond a reasonable doubt of their guilt. So long as any of you have a reasonable doubt as to the existence of any one of the several elements necessary to constitute the offense or offenses charged, the accused cannot be convicted.

If, after the consideration of the whole case, any juror should entertain a reasonable doubt of the guilt of the defendants, it is the duty of such juror to give the defendants the benefit of that doubt and to vote

for their acquittal so long as he retains such doubt.

When the evidence against the defendants is made up wholly of a chain of circumstances and there is a reasonable doubt as to one of the facts essential to establishing guilt it is the duty of the jury to acquit. In order to convict the defendants upon the evidence of circumstances it is necessary not only that all the circumstances concur to show that they committed the crime charged, but that they are inconsistent with any other rational conclusion. It is not sufficient that the circumstances proved coincide with, account for, and therefore render probable the hypothesis sought to be established by the prosecution, but they must exclude to a moral certainty and beyond all reasonable doubt every other hypothesis but the single one of guilt, or the jury should find the defendants not guilty.

It is not sufficient to establish a proof, although a strong one, arising from the doctrine of chances that the fact charged is more likely to be true than the contrary, but the evidence must establish the truth of the charge to a reasonable and moral [159] certainty, a certainty which convinces and directs the understanding and satisfies the reason and judgment of those who are bound to act conscientiously upon it.

Mere probabilities or suspicions are not sufficient to warrant a conviction, nor is it sufficient that the greater weight or preponderance of the evidence supports the allegations of the indictment, nor is it sufficient that from the doctrine of chance it is more probable that the defendant is guilty than innocent to warrant conviction.

Circumstances of suspicion no matter how grave or strong are not proof of guilt, and the defendants must be found not guilty unless the facts of their guilt are proved beyond a reasonable doubt.

Certain evidence has been ordered stricken from the record. I instruct that you will not consider or make any deductions or conclusions from the evidence so stricken out.

The defendants at the outset of the trial, are presumed to be innocent men. They are not required to prove themselves innocent. In considering the testimony in this case, you must look at that testimony and view it in the light of that presumption, a presumption that abides with the defendants throughout the trial of the case, during your deliberations, and until you have arrived at a verdict.

While the prosecution is bound to prove the defendants' guilty of the offense charged in the indictment to a moral certainty and beyond all reasonable doubt before you can find them guilty, a different rule applies to the testimony and proof offered on behalf of the defendants. The defendants are not obliged nor called upon to prove any fact in their favor beyond a reasonable doubt. If the proof offered by the defendants [160] creates in your mind a reasonable doubt as to their guilt, or as to the truth of any material fact necessary to constitute the crime charged in the indictment, it is your duty to acquit the defendants. If the proof offered by the defendants has created or raised in your minds a reasonable doubt as to their guilt of the offense charged in the indictment, or as to the truth of any material fact

necessary to constitute such offense, you should acquit.

The term "reasonable doubt" is not a mere figure of speech, nor is it to be lightly looked upon by the jury. It is a substantial right given by the law, that no person shall be convicted of any crime unless his guilt is proved beyond all reasonable doubt. You must be satisfied of the guilt of the defendant. If not so satisfied of their guilt beyond all reasonable doubt, it is your duty to acquit them. Each and every juror should be satisfied of the guilt of the defendants to a moral certainty, and beyond all reasonable doubt, before he agrees to a verdict of guilty. As long as any one juror entertains a reasonable doubt of the defendants' guilt, he should withhold his assent to a verdict of guilty, but this does not mean that any juror should obstinately adhere to his opinion when convinced that he is wrong.

In every crime or public offense there must exist a union or a joint operation of act and intent or criminal negligence. The intent or intention is manifested by the circumstances connected with the offense and the sound mind and discretion of the accused person. All persons are of sound mind who are neither idiots, lunatics or are affected with insanity.

If the evidence in this case tends to, or may reasonably support two theories or conclusions, one consistent with the defendants' guilt and the other consistent with their innocence, then it is [161] your duty as jurors in this case to reject the one tending to show guilt and adopt the one tending to show innocence.

Now, we have had the term "reasonable doubt." A reasonable doubt of the guilt of a defendant is a doubt based upon reason, and which is reasonable in view of all the evidence—an honest, substantial misgiving, generated by insufficient proof—and not a captious doubt, or a doubt suggested by the ingenuity of counsel and unwarranted by the testimony. It must be supported by reason and not by mere conjecture and idle supposition irrespective of evidence.

A reasonable doubt is not a mere whim, but is such a doubt as reasonable men may entertain after a careful consideration of all of the evidence in the case. It is such a doubt as reasonable men of sound judgment, without bias, prejudice or interest, after calmly conscientiously and deliberately weighing the testimony, would entertain as to the guilt of the defendants. It is a substantial doubt arising from the evidence or from a want of evidence in the case.

The term "reasonable doubt," therefore, means just what its language imports. To be a reasonable doubt it must be based upon reason. There is hardly anything relating to human affairs that is not open to some possible or fanciful or imaginary doubt. Mere possible or fanciful or imaginary doubts are not reasonable doubts. But a reasonable doubt is defined to be that state of the case which, after an entire comparison of all the evidence, leaves the minds of the jury in that condition that they cannot say that they have an abiding conviction to a moral certainty of the truth of the charge.

You understand that it requires the concurrence of all of you to agree upon a verdict, and if you so

agree, you will have [162] such verdict signed by your foreman and returned into Court.

(Thereupon the jury retired to deliberate upon its verdict and subsequently returned into Court and rendered a verdict finding both defendants guilty on all counts in the indictment.)

The COURT.—What time will we fix for judgment?

Mr. PRICE.—One week from to-day, your Honor.

The COURT.—What is the amount of bail on which these defendants are at large?

The CLERK.—\$5,000 as to each defendant.

Mr. McKINLEY.—If your Honor please, with reference to the matter of bail, now that the case has been concluded and a verdict rendered, I deem it my duty to say to the Court that each of these defendants has previously suffered a conviction for the smuggling of opium, in the Southern District of California, one having been imprisoned in the Leavenworth penitentiary and one in the County Jail. It seems to me, under those circumstances, that both of these defendants should be put in the custody of the Marshal.

Mr. PRICE.—While that is a fact, your Honor, one of the defendants came here by himself from El Paso and—

The COURT.—The order asked for by the District Attorney will be made, the defendants will be committed to the custody of the Marshal.

Mr. DANFORD.—No bail fixed at all.

The COURT.—No bail fixed pending judgment.

The foregoing contains all of the testimony and

evidence both oral and documentary, and a full statement of the proceedings in the case.

The defendants Thomas Andrews *alias* Thomas J. Murphy and [163] George Olin Poole, *alias* Charles Moore hereby present the foregoing as their Bill of Exceptions herein, and respectfully ask that the same may be allowed, signed, sealed and made a part of the record in this case.

Dated: June 6th, 1914.

GEORGE E. PRICE,

Attorney for said Defendants, Thomas Andrews,
alias Thomas J. Murphy and George Olin Poole,
alias Charles Moore.

**Stipulation and Order Settling and Allowing Bill of
Exceptions.**

It is hereby stipulated and agreed that the foregoing Bill of Exceptions is true and correct, and that the same may be allowed and settled by the Court.

Dated: June 8th, 1914.

JOHN W. PRESTON,

United States Attorney and Attorney for Plaintiff.

GEORGE E. PRICE,

Attorney for Defendants, Thomas Andrews *alias*
Thomas J. Murphy and George Olin Poole,
alias Charles Moore.

The above and foregoing Bill of Exceptions is hereby settled and allowed by me this 9th day of June, A. D. 1914.

M. T. DOOLING,

Judge.

Due service and receipt of a copy of the within Bill of Exceptions this 6th day of June, 1914, is hereby admitted.

WALTER E. HETTMAN,
Asst. United States Attorney, Northern District of
California.

[Endorsed]: Filed Jun. 9, 1914. W. B. Maling,
Clerk. By C. W. Calbreath, Deputy Clerk. [164]

*In the District Court of the United States, in and for
the Northern District of California, First Divi-
sion.*

No. 5345.

THE UNITED STATES OF AMERICA,

vs.

GEORGE POOLE, *alias* GEORGE MOORE et al.

Verdict.

We, the jury, find George Poole, *alias* George
Moore, the defendant at the bar, Guilty on all counts.

JOHN T. GILMARTIN,
Foreman.

[Endorsed]: Filed Nov. 22, 1913, at 5 o'clock and
50 minutes P. M. W. B. Maling, Clerk. By Francis
Krull, Deputy Clerk. [165]

*In the District Court of the United States, in and for
the Northern District of California, First Division.*

No. 5345.

THE UNITED STATES OF AMERICA,

vs.

THOMAS ANDREWS, *alias* THOMAS J. MURPHY, et al.

Verdict.

We, the Jury, find Thomas Andrews, *alias* Thomas J. Murphy, the defendant at bar, Guilty on all counts.

JOHN T. GILMARTIN,

Foreman.

[Endorsed]: Filed Nov. 22, 1913, at 5 o'clock and 50 minutes P. M. W. B. Maling, Clerk. By Francis Krull, Deputy Clerk. [166]

*In the United States District Court in and for the
Northern District, State of California.*

No. 5345.

Div. No. 2.

UNITED STATES

vs.

THOMAS ANDREWS, *alias* ———, GEORGE POOLE, *alias* ———, et al.

Motion to Set Aside Verdict and Motion for New Trial.

Now comes the defendants through their attorneys and move the Court for a new trial and in support

thereof urges the following grounds:

1.

That the verdict is against the law and contrary to the evidence.

2.

That the verdict is not supported by the evidence and that the evidence is insufficient to support the verdict.

3.

That the Court committed manifest error affecting the substantial rights of the defendants during the trial of the case, that were duly and regularly excepted to by the defendants.

4.

That the indictment in said cause fails to state an offense against the laws of the United States.

5.

On the ground that newly discovered evidence has been found, which newly discovered evidence is material to the defense of defendants, and which defendants had no means of knowing would be material until the close of the trial; that said newly discovered [167] evidence, if introduced on behalf of the defendants, would effectually dissipate any of the plaintiff's testimony concerning certain packages alleged to have been handled by defendants in and about Nogales, Old Mexico; and defendants aver that said newly discovered evidence is not merely cumulative, but was indispensable, and is material, to the proper defense. Defendants further show that it was impossible, with reasonable diligence, which was always exercised heretofore by defendants,

to have discovered prior to trial, or prior to the midst of trial, the aforesaid newly discovered evidence, and that said newly discovered evidence will fully and completely exonerate the defendants and each of them from any effect of testimony given by witnesses for the Government from Nogales, Old Mexico. Defendants respectfully refer to the affidavits hereto attached and made a part hereof, in further support of matters herein pertaining to newly discovered evidence.

6.

That the defendants were surprised by the testimony of Louie Sang, the Chinese witness *from* whom defendants placed upon the witness-stand pursuant to statements made by said witness in the corridor of this court building, and which testimony serving as a surprise to the defendants, afforded defendant no opportunity for or preparation to overcome said testimony by showing the falsity thereof.

In support of said motion for a new trial, the defendants hereby refer to and make a part hereof all of the records, evidence and proceedings in the above-entitled case, together with the affidavits filed herewith relating to newly discovered evidence.

Wherefore the defendants pray that said motion to set aside verdict and motion for a new trial be granted.

GEORGE E. PRICE,
GILBERT D. BOALT,
Attorneys for Defendants. [168]

*In the United States District Court in and for the
Northern District, State of California.*

UNITED STATES

vs.

ANDREWS et al, POOLE et al.

**Affidavit of George G. Sauer [in Support of Motion
for New Trial].**

George G. Sauer, being duly sworn, deposes and says: That he is a resident of El Paso, in the State of Texas and Republic of the United States, that he is engaged in the business of general brokerage, in El Paso, Texas, and at Ciudad Juarez, Mexico, being known as a general commission broker, and in the course of such business as general commission broker, he transacts business for the branch bank of the Bancho Nacional de Mexico, located at Ciudad Juarez, Mexico, State of Chihuahua. That on or about the 8th day of June, A. D. 1913, he delivered at Juarez, Mexico, to George Moore, also known as George Poole, an order from the branch bank of the Banco Nacional de Mexico, of Juarez, Mexico, directed to the branch bank of the Banco Nacional at Nogales, Sonora, Mexico, directing the said branch bank of the Banco Nacional at Nogales, Sonora, Mexico, to deliver to the said George Moore or his order, certain boxes marked Amapol, then in the possession, care and custody of the branch bank of the Banco Nacional de Mexico, at Nogales, Sonora, Mexico, with instructions of said Juarez branch bank of the Banco Nacional of Mexico, to the Nogales

office of the Banco Nacional de Mexico, to use all their power and influence with the Mexican custom-house authorities, to help George Moore to ship the said cases Amapol to Cananea, State of Sonora, Republic of Mexico, and there at Cananea to be delivered to the Bank at Cananea, Sonora, Mexico. A few days subsequent to the 10th day of June, 1913, the Banco Nacional de Mexico, branch at Juarez, Mexico, [169] informed me of having received acknowledgment from the Banco Nacional de Mexico, branch at Nogales, Sonora, Mexico, that they would deliver the cases of Amapol to George Moore and assist him all possible to have the cases forwarded to Cananea, Sonora, Mexico. Subsequently the Banco Nacional de Mexico, branch at Nogales, Sonora, Mexico, also informed their branch *branch* bank at Juarez, Mexico, that their instructions were complied with, regarding the cases of Amapol; in other words, the cases Amapol had been forwarded to Cananea, Mexico, as per their instructions.

Deponent further saith, that to his best knowledge and belief, George Moore, as well as the branch bank of the Banco Nacional de Mexico at Juarez, Mexico, merely acted as agents to have the cases Amapol removed from Nogales, Sonora, Mexico, to Cananea, interior of the State of Sonora, Mexico, with a view of safekeeping and all instructions and orders, the Banco Nacional de Mexico branch bank at Nogales, Sonora, Mexico, received regarding the disposal of the cases Amapol, were to forward them to Cananea, Sonora, Mexico.

Further affiant saith not.

GEORGE G. SAUER.

Subscribed and sworn to before me this 28th day of November, A. D. 1913, at El Paso, County of El Paso, State of Texas.

[Seal] J. W. MAGOFFIN,
Notary Public in and for the County of El Paso,
State of Texas.

My commission expires May 31, 1915. [170]

*In the United States District Court in and for the
Northern District, State of California.*

UNITED STATES

vs.

ANDREWS et al., POOLE et al.

**Affidavit of Paulino Fontes [in Support of Motion
for New Trial].**

PAULINO FONTES.

AFFIDAVIT OF ~~PABLINA FONTAS.~~

City of Nogales,
State of Sonora,
Republic of Mexico,—ss.

PAULINO FONTES,

~~PABLINO FONTAS,~~ being first duly sworn, deposes and says: That he is an officer of the Government of the Republic of Mexico, his specific official designation being Commandante de Los Inspectores.

That on or about the 10th day of June, 1913, at the request of George Moore, he checked for railroad transportation four (4) boxes marked "AMOPOL"

to be transported from Nogales, State of Sonora,
Cananea,
Republic of Mexico, to ~~Cananea~~, Republic of
Mexico.

Further affiant saith not.

PAULINO FONTES.

Subscribed and sworn to before me at Nogales,
Ariz., this 25th day of Nov., 1913.

[Seal]

OTTO H. HEROLD,
Notary Public.

My commission expires Feby. 23, 1916.

Corrections on line 5-12-19 were made by me.

OTTO H. HEROLD,
Notary Public. [171]

*In the United States District Court in and for the
Northern District, State of California.*

UNITED STATES

vs.

ANDREWS et al., POOLE et al.

**Affidavit of Mettie Smith [in Support of Motion for
New Trial].**

City of El Paso,
County of El Paso,
State of Texas,—ss.

Mettie Smith, being first duly sworn, deposes and
says:

That she conducts a boarding-house at the city of
El Paso, State of Texas; that she is personally ac-
quainted with George Moore, who is also known as

George Poole; that said George Moore was a guest at her house as a boarder from about the 10th day of February, 1913, until some time in the first part of April, 1913. That during said time, to affiant's personal knowledge, said George Moore was constantly in the City of El Paso, State of Texas.

Further affiant saith not.

METTIE SMITH.

Subscribed and sworn to before me this 28th day of November, A. D. 1913, at El Paso, State of Texas.

[Seal]

GEORGE HAILE,

Notary Public in and for the County of El Paso,
State of Texas.

Correction of spelling name, line 12, made by me.

GEO. HAILE. [172]

*In the United States District Court in and for the
Northern District, State of California.*

UNITED STATES

vs.

ANDREWS et al., POOLE et al.

**Affidavit of Charles E. Matthews [in Support of
Motion for New Trial].**

City of El Paso,
County of El Paso,
State of Texas,—ss.

Charles E. Matthews, being first duly sworn, deposes and says: That he is a Police Detective in the City of El Paso, State of Texas. That affiant is per-

sonally acquainted with George Moore, also known as George Poole; and affiant further states that to his own personal knowledge the said George Moore was constantly in El Paso during the months of December, 1912, January, February, and March, 1913.

CHAS. E. MATTHEWS.

Subscribed and sworn to before me this 29th day of November, A. D. 1913, at El Paso, State of Texas.

[Seal]

K. C. HARTNETT,

Notary Public in and for the County of El Paso,
State of Texas.

All corrections and erasures were made by me.

H. C. HARTNETT,

Notary Public. [173]

*In the United States District Court in and for the
Northern District, State of California.*

UNITED STATES

vs.

ANDREWS et al., POOLE et al.

**Affidavit of James Newton [in Support of Motion
for New Trial].**

City of El Paso,

County of El Paso,

State of Texas,—ss.

James Newton, being first duly sworn, deposes and says: That he is a Police Officer of the City of El Paso, State of Texas. That affiant is personally acquainted with George Moore, also known as George

Poole; and affiant further states that to his own belief personal knowledge the said George Moore was constantly in El Paso during the months of December, 1912, and January, February and March, 1913.

JAMES NEWTON,

Subscribed and sworn to before me this 28th day of November, A. D. 1913, at El Paso, State of Texas.

[Seal]

JUAN SMITH,

Notary Public in and for the County of El Paso, State of Texas.

Change from "knowledge" to "belief" on line 16 made by me.

JUAN SMITH. [174]

In the United States District Court in and for the Northern District, State of California.

UNITED STATES

vs.

THOMAS ANDREWS, *alias* ———, GEORGE POOLE, *alias* ——— et al.

Affidavit of Louise Lorraine [in Support of Motion for New Trial].

State of California,

City and County of San Francisco,—ss.

Louise Lorraine, being first duly sworn, deposes and says:

That on the 22d of November, 1913, she witnessed a conversation between George E. Price, Esq., one of the attorneys in the above-entitled case, and Louis

**Affidavit of Defendant George Poole on Motion for
a New Trial.**

State of California,

City and County of San Francisco,—ss.

George Poole, being first duly sworn, deposes and says:

That he is one of the defendants in the above-entitled action. That on the 7th day of October, 1913, defendant was indicted with one Thomas Andrews, *alias* Thomas J. Murphy, Charles Benton and Chung Kaw by the Grand Jury of the United States of America, within and for the Northern District of California, on two counts, charging defendants with a violation of Section 37, Criminal Code of the United States, and Act of February 6th, 1909.

That on the 22d day of November, 1913, defendants were found guilty on both counts of indictment above referred to.

That since that 22d day of November, 1913, new evidence has been discovered material to defendants which could not with reasonable diligence have been discovered and produced at the trial of defendants.

That the evidence so discovered is set forth in the affidavits of George Sauer, Paulino Fontas, Mettie Smith, Charles E. Matthews, James Newton and Louise Lorraine, respectively, which affidavits set forth the facts to which said affiant would testify upon a new trial of the above-entitled action.

That affiant is of the opinion that in event that defendant's [176] motion for a new trial is granted that upon the introduction evidence of the

facts set forth in the above and foregoing affidavits, that a verdict different from the one heretofore rendered against defendants will be found upon said new trial.

[Seal]

GEO. O. POOLE.

Subscribed and sworn to before me this 3d day of December, 1913.

LESTER G. BURNETT,
Notary Public in and for the City and County of
San Francisco, State of California. [177]

*In the United States District Court in and for the
Northern District, State of California.*

No. 5345.

Div. No. 2.

UNITED STATES

vs.

THOMAS ANDREWS *alias* ———, GEORGE
POOLE *alias* ——— et al.

**Affidavit of George E. Price, Esq., on Motion for
New Trial.**

State of California,
City and County of San Francisco,—ss.

George E. Price, Esq., being first duly sworn, deposes and says:

That he is one of the attorneys for defendants in the above-entitled action and was such attorney during the trial of the defendants in the above-entitled action.

That since the trial of said defendants new evidence has been discovered material to the defend-

[Enclosed]: Filed Dec. 3, 1913. W. B. Maling,
Clerk. By Francis Krull, Deputy Clerk. [179]

*In the United States District Court in and for the
Northern District, State of California.*

UNITED STATES

vs.

ANDREWS et al., POOLE et al.

**Affidavit of Nellie Black [in Support of Motion for
New Trial].**

City of El Paso,
County of El Paso,
State of Texas,—ss.

Nellie Black, being first duly sworn, deposes and says: That affiant conducts a boarding-house in the City of El Paso, State of Texas; that she is personally acquainted with George Moore, who is also known as George Poole; that said George Moore was a guest at her house as a boarder from the 22d day of December, A. D. 1912, until about the 10th of February, 1913. That during said time, to affiant's own knowledge, said George Moore was constantly in the City of El Paso, State of Texas.

Further affiant saith not.

NELLIE BLACK.

Subscribed and sworn to before me this sixth day
of December, A. D. 1913, at El Paso, Texas.

Notary Public in and for the County of El Paso,
State of Texas. [180]

State of Arizona,
County of Maricopa,—ss.

Before me, George W. Elias, a Notary Public in and for said County, State of Arizona, on this day personally appeared Nellie Black, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that she executed the same for the purpose and consideration therein expressed.

Given under my hand and seal of office this sixth day of December, A. D. 1913.

[Seal]

GEORGE W. ELIAS,

Notary Public.

My Commission expires May 27, 1917.

Receipt of copy of within affidavit acknowledged this 10th day of Dec., 1913.

WALTER E. HETTMAN,

Asst. U. S. Atty.

[Endorsed]: Filed Dec. 10, 1913. W. B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk. [181]

*In the United States District Court in and for the
Northern District, State of California.*

UNITED STATES

vs.

THOMAS ANDREWS *alias* ———, GEORGE
POOLE *alias* ——— et al.

Motion in Arrest of Judgment.

The defendants in the above-entitled cause before Judgment respectfully move the Court for order ap-

pearing on the face of the Indictment and upon the Record that Judgment for the Government be arrested and suspended and the conviction rendered therein be declared null and void.

Said Motion is based on the following grounds:

1.

That the first count of the Indictment herein fails to charge any offense against the laws of the United States.

2.

That the second count of the Indictment herein fails to charge any offense against the laws of the United States.

3.

That the Grand Jury by which the Indictment herein was found had no legal authority to inquire into the offense charged in count one of said Indictment by reason of its not being within the legal jurisdiction of the Northern District of California.

4.

That the Grand Jury by which the Indictment herein was found had no legal authority to inquire into the offense charged in count two of said Indictment by reason of its not being within the legal jurisdiction of the Northern District of California. [182]

5.

That count one of the Indictment herein and all of the allegations therein included upon which said count is based does not allege any offense of which this Court has jurisdiction.

6.

That count two of the Indictment herein and all of

the allegations therein included upon which said count is based does not allege any offense of which this Court has jurisdiction.

7.

That section 37, C. C. U. S., and Act of February 9, 1909, and each of them, upon which said section and act, count one of the Indictment herein and count two of the Indictment herein respectfully are predicated, so far as either said section or said act may attempt to impose penalties and inflict judgment for the acts, matters or things set forth in said Indictment is, and each of them are, in violation of the Constitution of the United States, and more particularly of section one of the 14th amendment of said Constitution of the United States, also the fifth amendment of said Constitution of the United States and section 858, United States Compiled Statutes of 1901, Act March 16th, 1878, C. 37, and void.

8.

That count one of said Indictment herein is in other respects informal and is insufficient and defective.

9.

That count two of said Indictment herein is in other respects informal and is insufficient and defective.

10.

That the verdict is against the law and contrary to the evidence.

11.

That the verdict is not supported by the evidence

and that [183] the evidence is insufficient to support the verdict.

12.

That the Court committed manifest error affecting the substantial rights of the defendants during the trial of the case that were duly and regularly excepted to by defendants.

13.

That the Court committed manifest error affecting the substantial rights of the defendants by refusing to allow defendants, or either of them to withdraw their respective pleas of not guilty, which said pleas of not guilty were taken at a time when defendants were not represented by counsel, and permitting defendants, previous to the trial, through their counsel and upon advice of their counsel, to answer, demur to or to plead to the Indictment herein.

14.

That the Court committed manifest error affecting the substantial rights of the defendants at the time that the Government first rested their case, by refusing to permit counsel to argue a motion that the Court instruct the jury to acquit defendants at said time, and by the Court refusing to instruct the jury to acquit the defendants.

15.

That the Court committed manifest error in refusing to grant defendants' motion for a new trial upon newly discovered evidence, which newly *discovered would*, had it been presented to the jury, have dissipated the evidence of the witnesses for the Government, relative to the handling of opium in Nogales,

Sonora, Mexico, which newly discovered evidence with due diligence could not have been discovered on the part of the defendants prior to the trial or during the course of the trial.

16.

That the Court committed manifest error in denying defendants' [184] motion for a new trial upon all of the grounds set forth in said motion for a new trial.

17.

That the Court committed manifest error in denying the motion for a new trial in view of the affidavits in support thereof, which affidavits set forth evidence which would tend to show that one of the defendants had had transactions involving handling of opium in a foreign country, and would tend to prove that the transaction of handling opium in a foreign country has not been continued in the United States.

WHEREFORE defendants pray that said Judgment be arrested and that no sentence be had therein.

GEORGE E. PRICE,

GILBERT D. BOALT,

Attorneys for Defendants.

[Endorsed]: Filed Dec. 10, 1913. W. B. Maling, Clerk. By Francis Krull, Deputy Clerk. [185]

At a stated term of the District Court of the United State of America, for the Northern District of California, First Division, held at the courtroom thereof, in the City and County of San Francisco, on Wednesday, the 10th day of December, in the year of our Lord, one thousand nine hundred and thirteen. Present: The Honorable M. T. Dooling, Judge.

#5345.

UNITED STATES

vs.

THOMAS ANDREWS, *alias*, etc., and GEORGE POOLE, *alias*, etc.

Minutes—Sentence, etc.

The defendants, Thomas Andrews, *alias*, etc., and George Poole, *alias*, etc., each being present in open court with their counsel, said counsel made a motion for a new trial, which after hearing argument, by the Court ordered that said motion be, and the same is hereby denied, to which ruling said defendants then and there duly excepted. The said counsel then made a motion in arrest of judgment, which said motion was by the Court ordered and is hereby denied, to which ruling said defendants then and there duly excepted. The said defendants being now fully informed of the nature of the indictment herein against them, of their arraignment and plea of not guilty, and of their trial and the verdict of the jury finding each of said defendants guilty on all counts of the indictment, and no sufficient cause being shown

or appearing to the court why judgment should not be pronounced against them, now here by the Court ordered that each of said defendants be imprisoned in the State Penitentiary at San Quentin, Marin County, California, for the term of two years on the first count of the Indictment herein and one year on the second count of the Indictment herein. Further ordered that the said term of imprisonment on the second count of the indictment commence to run at the expiration of the said term of [186] imprisonment on the first count of the indictment. Said defendants each to be imprisoned for the term of three years for the offense of which they stand convicted. Further ordered that execution of judgment herein be stayed for a period of two weeks. [187]

In the District Court of the United States, for the Northern District of California, First Division.

No. 5345.

THE UNITED STATES OF AMERICA

vs.

THOMAS ANDREWS, *alias* THOMAS J. MURPHY and GEORGE POOLE, *alias* GEORGE MOORE.

Judgment on Verdict of Guilty.

CONVICTED OF A CONSPIRACY TO IMPORT,
RECEIVE AND CONCEAL OPIUM.

Benj. L. McKinley, Esq., United States Attorney, and the defendants, with George E. Price, Esq., their attorney came into court. The defendants were duly informed by the Court of the nature of the In-

dictment filed on the 7th day of October, 1913, charging them with the crime of conspiracy to import, receive and conceal opium; of their arraignment and plea of Not Guilty, of their trial and the verdicts of the Jury on the 22d day of November, 1913, to wit: "We, the Jury, find Thomas Andrews, *alias* Thomas J. Murphy, the defendant at the bar, Guilty on all Counts." "We, the Jury, find George Poole, *alias* George Moore, the defendant at the bar, Guilty on all counts."

The defendants were then asked if they had any legal cause to show why judgment should not be pronounced against them, and no sufficient cause being shown or appearing to the Court, and the Court having denied a Motion for New Trial and Motion to set aside the Verdict:

AND WHEREAS, the said Thomas Andrews, *alias* Thomas J. Murphy, and George Poole, *alias* George Moore, having been duly convicted in this Court of the crime of conspiracy to import, receive and conceal Opium;

IT IS THEREFORE ORDERED and ADJUDGED that the said Thomas Andrews, *alias* Thomas J. Murphy and George Poole, *alias* George Moore, each be and is hereby sentenced to be imprisoned for the term of two (2) years on the 1st count of the Indictment and one year on the 2d count of the Indictment. [188]

FURTHER ORDERED that the said terms of imprisonment on the second count of the Indictment commence at the expiration of the sentence on the 1st count of the Indictment.

AND IT IS FURTHER ORDERED that the said terms of imprisonment be executed upon the said Defendants Thomas Andrews, *alias* Thomas J. Murphy, and George Poole, *alias* George Moore, by imprisonment in the State Prison at San Quentin, California.

JUDGMENT entered this 10th day of December, A. D. 1913.

W. B. MALING,
Clerk.

By C. W. Calbreath,
Deputy Clerk.

Entered in Vol. 5 Judg. and Decrees, at Page 179.
[189]

*In the United States District Court in and for the
Northern District of California.*

No. 5345.

UNITED STATES

vs.

THOMAS ANDREWS, *alias* THOMAS J. MURPHY, GEORGE POOLE, *alias* —, et al.

Petition for Writ of Error and Order Allowing Writ.

Your petitioners, Thomas Andrews, *alias* Thomas J. Murphy, and George Poole, the defendants above named, bring this their petition for Writ of Error to the District Court of the United States, in and for the Northern District of California, and in that behalf your petitioners show that on the 10th day of December, 1913, there was made, given and rendered in the above cause, a judgment against your peti-

tioners wherein and whereby each of your petitioners were adjudged and sentenced to be confined to States Prison at San Quentin, State of California, for a period of three years; and,

Your petitioners show that they are advised by counsel and they aver that there were manifest errors in the records and proceedings had in said cause and in the making, giving, rendition and entry of said judgment and sentence to the great injury and damage of your petitioners, all of which errors will be made more fully to appear by an examination of said records and by an examination of the Bill of Exceptions to be tendered and filed, and in the Assignment of Errors hereinafter set out and to be presented herewith and to the end that said judgment, sentence and proceedings may be reviewed by the United States Circuit Court of Appeals for the Ninth Circuit. [190]

Your petitioners now pray that a Writ of Error may be issued directed therefrom to the said District Court of the United States for the Northern District of California, returnable according to law and practice of the court, and that there may be directed to be returned pursuant thereto, a true copy of the records, Bill of Exceptions, Assignment of Errors, and all proceedings had in said cause, and that same may be removed into the United States Circuit Court of Appeals for the Ninth Circuit to the end that error, if any, has appeared, may be duly corrected and full and speedy justice done your petitioners.

And your petitioners make the Assignment of Errors presented herewith upon which they will rely

and which will be made to appear by a return of said records in obedience to said Writ.

WHEREFORE, your petitioners pray issuance of a Writ of Error and pray that Assignment of Errors presented herewith may be considered as their Assignment of Error from said Writ of Error, and that the judgment rendered in this case may be reversed and held for naught, and that said case be remanded for further proceedings and that there may be awarded a supersedeas upon said judgment and all necessary process including bail.

T. J. MURPHY,
GEORGE POOLE,
Petitioners.

GEORGE E. PRICE,
GELBERT D. BOALT,

Attorneys for Plaintiffs in Error. [191]

Order Allowing Writ of Error and Supersedeas.

The Writ of Error prayed for by the defendants, Thomas Andrews and George Poole is hereby allowed.

That the supersedeas prayed for by said defendants pending the decision upon the Writ of Error is allowed.

The bond for costs upon the Writ of Error is hereby fixed at the sum of one Hundred Dollars.

Dated, San Francisco, Cal., the 15th day of December, 1913.

M. T. DOOLING,
District Judge of the United States Court for the
Northern District of California.

The defendants are admitted to bail each in the sum of \$5000.00 pending the hearing and determination of the Writ of Error herein, the bond to be approved by Hon. Wm. C. Van Fleet, Hon. W. W. Morrow, or Commissioner Francis Krull, and upon such approval the defendants will be released.

Dec. 24, 1913.

M. T. DOOLING,
Judge.

Due service of the within Petition for Writ of Error and Order allowing Writ of Error and Superseas admitted this 24th day of December, 1913.

BENJ. L. MCKINLEY,
United States Attorney,
T. H. SELVAGE,
Asst.

[Endorsed]: Filed Dec. 24, 1913. W. B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk. [192]

*In the United States District Court in and for the
Northern District of California.*

No. 5345.

UNITED STATES

vs.

THOMAS ANDREWS, *alias* THOMAS J. MURPHY, GEORGE POOLE, *alias* —, et al.

Assignment of Errors.

THOMAS ANDREWS, *alias* Thomas J. Murphy, and GEORGE POOLE, defendants in the above-entitled cause and plaintiffs in error herein, having petitioned for an order from said Court permitting

them to procure a Writ of Error in this Court directed from the United States Circuit Court of Appeals for the Ninth Circuit from the judgment and sentence made and entered in said cause against Thomas Andrews and George Poole, now make and file with their said petition the following Assignment of Errors herein upon which they will apply for a reversal of said judgment and sentence upon said Writ and which said errors, and each and every one of them are to the great detriment, injury and prejudice of said defendants and violation of the rights conferred upon them by law, and they say in the records and proceedings in the above-entitled cause upon the hearing and determination thereof in the District Court of the United States for the Northern District of California there is manifest error in this, to wit:

1. That said District Court erred in overruling defendants' motion to allow defendants made prior to trial to withdraw their pleas of not guilty for the purpose of interposing a demurrer to the indictment herein.

2. That the Court erred in overruling the motion of defendants made at the close of the case for the motion to instruct the [193] jury to acquit the defendants and by refusing to permit counsel to argue said motion.

3. That the Court erred in overruling the motion of defendants for a new trial and not allowing same on the grounds in said motion taken and assigned, to wit:

(a)

That the verdict is against the law and contrary to the evidence.

(b)

That the verdict is not supported by the evidence and that the evidence is insufficient to support the verdict.

(c)

That the Court committed manifest error affecting the substantial rights of the defendants during the trial of the case, that were duly and regularly excepted to by the defendants.

(d)

That the indictment in said cause fails to state an offense against the laws of the United States.

(e)

On the ground that newly discovered evidence has been found, which newly discovered evidence is material to the defense of defendants, and which defendants had no means of knowing would be material until the close of the trial; that said newly discovered evidence, if introduced on behalf of the defendants, would effectually dissipate any of the plaintiff's testimony concerning certain packages alleged to have been handled by defendants in and about Nogales, Old Mexico; and defendants aver that said newly discovered evidence is not merely cumulative, but was indispensable, and is material, to the proper defense. Defendants further show [194] that it was impossible, with reasonable diligence, which was always exercised heretofore by defendants, to have discovered prior to trial, or prior to the midst of trial, the

aforesaid newly discovered evidence, and that said newly discovered evidence will fully and completely exonerate the defendants and each of them from any effect of testimony given by witnesses for the Government from Nogales, Old Mexico. Defendants respectfully refer to the affidavits hereto attached and made a part hereof, in further support of matters herein pertaining to newly discovered evidence.

(f)

That the defendants were surprised by the testimony of Louis Sang, the Chinese witness whom defendants placed upon the witness-stand pursuant to statements made by said witness in the corridor of this court building, and which testimony serving as a surprise to the defendants, afforded defendants no opportunity for, or preparation to overcome said testimony by showing the falsity thereof.

In support of said motion for a new trial, the defendants hereby refer to and make a part hereof all of the records, evidence and proceedings in the above-entitled case, together with the affidavits filed herewith relating to newly discovered evidence.

4. That the Court erred in overruling and denying defendants' motion in arrest of judgment on the grounds in said motion taken and assigned, to wit:

(a)

That the first count of the Indictment herein fails to charge any offense against the laws of the United States.

(b)

That the second count of the Indictment herein fails to [195] charge any offense against the laws

of the United States.

(c)

That the Grand Jury by which the Indictment herein was found had no legal authority to inquire into the offense charged in count one of said Indictment by reason of its not being within the legal jurisdiction of the Northern District of California.

(d)

That the Grand Jury by which the Indictment herein was found had no legal authority to inquire into the offense charged in count two of said Indictment by reason of its not being within the legal jurisdiction of the Northern District of California.

(e)

That count one of the Indictment herein and all of the allegations therein included upon which said count is based does not allege any offense of which this Court has jurisdiction.

(f)

That count two of the Indictment herein and all of the allegations therein included upon which said count is based does not allege any offense of which this Court has jurisdiction.

(g)

That section 37, C. C. U. S., and Act of February 9, 1909, and each of them, upon which said section and act, count one of the Indictment herein and count two of the Indictment herein respectfully are predicated, so far as either said section or said act may attempt to impose penalties and inflict judgment for the acts, matters or things set forth in said Indictment is, and each of them are, in violation of the

Constitution [196] of the United States, and more particularly of section one of the 14th amendment of said Constitution of the United States, also the fifth amendment of said Constitution of the United States and section 858, United States Compiled Statutes of 1901, Act March 16th, 1878, C. 37, and void.

(h)

That count one of said Indictment herein is in other respects informal and is insufficient and defective.

(i)

That county two of said Indictment herein is in other respects informal and is insufficient and defective.

(j)

That the verdict is against the law and contrary to the evidence.

(k)

That the verdict is not supported by the evidence and that the evidence is insufficient to support the verdict.

(l)

That the Court committed manifest error affecting the substantial rights of the defendants during the trial of the case that were duly and regularly excepted to by the defendants.

(m)

That the Court committed manifest error affecting the substantial rights of the defendants by refusing to allow defendants, or either of them, to withdraw their respective pleas of not guilty, which said pleas of not guilty were taken at a time when defendants

were not represented by counsel, and permitting defendants, previous to the trial, through their counsel and upon advice of their counsel, to answer, demurrer to or to plead to the Indictment herein.

(n)

That the Court committed manifest error affecting the substantial [197] rights of the defendants at the time that the Government first rested their case, by refusing to permit counsel to argue a motion that the Court instruct the jury to acquit defendants at said time, and by the Court refusing to instruct the jury to acquit the defendants.

(o)

That the Court committed manifest error in refusing to grant defendants' motion for a new trial upon newly discovered evidence, which newly discovered evidence would, had it been presented to the jury, have dissipated the evidence of the witnesses for the Government, relative to the handling of opium in Nogales, Sonora, Mexico, which newly discovered evidence with due diligence could not have been discovered on the part of the defendants prior to the trial or during the course of the trial.

(p)

That the Court committed manifest error in denying defendants' motion for a new trial upon all of the grounds set forth in said motion for a new trial.

(q)

That the Court committed manifest error in denying the motion for a new trial in view of the affidavits in support thereof, which affidavits set forth evidence which would tend to show that one of the defendants,

had had transactions involving handling of opium in a foreign country, and would tend to prove that the transaction of handling opium in a foreign country had not been continued in the United States.

5. That the District Court committed error in giving to the jury the following charges, to wit:

“The Act further provides that whenever on trial for violation of this section, the defendant is charged to have, or to have had possession of such opium or preparation [198] or derivative thereof, such possession shall be deemed sufficient evidence to authorize conviction unless the defendant shall explain possession to the satisfaction of the jury.”

GEORGE E. PRICE,

GILBERT D. BOALT,

Attorneys for Plaintiffs in Error.

Due service of the within Assignment of Errors by copy hereby admitted this 24 day of December, 1913.

BENJ. L. McKINLEY,

T. H. SELVAGE,

Asst.

[Endorsed]: Filed Dec. 24, 1913. W. B. Maling,
Clerk. By C. W. Calbreach, Deputy Clerk. [199]

At a stated term of the District Court of the United States of America, for the Northern District of California, First Division, held at the Court-room thereof, in the City and County of San Francisco, on Tuesday, the 23d day of December, in the year of our Lord, one thousand nine hundred and thirteen. Present: The Honorable M. T. DOOLING, Judge.

No. 5345.

UNITED STATES

vs.

THOS. ANDREWS and GEORGE POOLE.

Order Fixing Bail Pending Determination Writ of Error.

By the Court ordered that the bail of defendants herein pending the determination of the writ of error herein be, and the same is hereby fixed in the sum of \$5,000, as to each of said defendants. The bond given to be approved by either of the following Hon. W. W. Morrow, Hon. W. C. Van Fleet, Hon. M. T. Dooling, or Francis Krull, U. S. Commissioner. Further ordered that execution of judgment herein be stayed for a further period of two weeks. [200]

Writ of Error—Copy.

UNITED STATES OF AMERICA—ss.

The President of the United States of America, to the Honorable, the Judges of the District Court of the United States for the Northern District of California, Greeting:

Because, in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said District Court, before you, or some of you, between Thomas Andrews, *alias* Thomas J. Murphy, and George Poole, *alias* George Moore, plaintiffs in error, and the United States, defendant in error, a manifest error hath happened, to the great damage of the said Thomas Andrews, *alias* Thomas J. Murphy, and George Poole, *alias* George Moore, plaintiffs in error, as by their complaint appears:

We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the United States Circuit Court of Appeals for the Ninth Circuit, together with this writ, so that you have the same at the City of San Francisco, in the State of California, within thirty days from the date hereof, in the said Circuit Court of Appeals, to be then and there held, that, the record and proceedings aforesaid being inspected, the said Circuit Court of Appeals may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

WITNESS, the Honorable MELVILLE W. FULLER, Chief Justice of the United States, the

24 day of December, in the year of our Lord One Thousand Nine Hundred and Thirteen.

[Seal] W. B. MALING,
Clerk U. S. District Court, Northern District of
California. [201]

By C. W. Calbreath,
Deputy Clerk.

Allowed by:

M. T. DOOLING,
Judge of the District Court.

[Endorsed]: Filed Dec. 24, 1913. W. B. Maling,
Clerk. By C. W. Calbreath, Deputy Clerk. [202]

Citation on Appeal—Copy.

UNITED STATES OF AMERICA,—ss.

The President of the United States, to the United States of America, Greeting:

You are hereby cited and admonished to be and appear at a United States Circuit Court of Appeals for the Ninth Circuit, to be holden at the City of San Francisco, in the State of California, within thirty days from the date hereof, pursuant to an order allowing an appeal, of record in the Clerk's Office of the United States District Court for the Northern District of California, wherein George Poole and Thomas Murphy are appellants and you are appellee, to show cause, if any there be, why the decree rendered against the said appellant, as in the said order allowing appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

WITNESS, the Honorable MAURICE T. DOOLING, United States District Judge for the Northern District of California, this 22d day of June, A. D. 1914.

M. T. DOOLING,
United States District Judge.
Service admitted this 22d June, 1914.

JNO. W. PRESTON,
U. S. Dist. Atty.

[Endorsed]: Filed Jun. 22, 1914. W. B. Maling,
Clerk. By C. W. Calbreath, Deputy Clerk. [203]

[Bond for Costs on Writ of Error.]

KNOW ALL MEN BY THESE PRESENTS, That we, Thomas Andrews, *alias* Thomas J. Murphy et als., as principals, and Ambrose B. Dunn & Thomas E. Brophy, as sureties, are held and firmly bound unto the UNITED STATES OF AMERICA in the full and just sum of ONE HUNDRED (\$100.00) DOLLARS, to be paid to the said UNITED STATES OF AMERICA; to which payment, well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, by these presents.

Scaled with our seals and dated this 20th day of November, in the year of our Lord One Thousand Nine Hundred and Fourteen.

WHEREAS, lately at a District Court of the United States for the Northern District of California, First Division, in a suit depending in said court, between the UNITED STATES OF AMER-

ICA and Thomas Andrews, *alias* Thomas J. Murphy et als., No. 5345, a judgment of conviction was rendered against the said Thomas Andrews, *alias* Thomas J. Murphy et als., and the said Thomas Andrews, *alias* Thomas J. Murphy et als., having obtained from said court, a Writ of Error to reverse the judgment in the aforesaid suit, and a citation directed to the said UNITED STATES OF AMERICA, citing and admonishing it to be and appear at a United States Circuit Court of Appeals, for the Ninth Circuit, to be holden at San Francisco, in the State of California.

NOW, the condition of the above obligation is such, That if the said Thomas Andrews, *alias* Thomas J. Murphy et als. shall prosecute their writ of error to effect, and answer all damages and costs if they fail to make their plea good, then the above obligation to be void; else to remain in full force and virtue.

THOMAS MURPHY. (Seal)

AMBROSE B. DUNN. (Seal)

THOMAS E. BROPHY. (Seal)

Acknowledged before me the day and year first above written.

[Seal]

FRANCIS KRULL,
United States Commissioner, North'n Dist of California. [204]

United States of America,
Northern District of California,—ss.

Ambrose B. Dunn and Thomas E. Brophy, being duly sworn, each for himself, deposes and says, that he is a freeholder in said District, and is worth the sum of Two Hundred Dollars, exclusive of property

exempt from execution, and over and above all debts and liabilities.

AMBROSE B. DUNN.

THOMAS E. BROPHY.

Subscribed and sworn to before me, this 20th day of November, A. D. 1914.

[Seal] FRANCIS KRULL,
United States Commissioner, North'n Dist. of California.

Approved:

WALTER E. HETTMAN,
Asst. U. S. Atty.

Approved:

WM. C. VAN FLEET,
Judge.

[Endorsed]: Filed Nov. 23, 1914. W. B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk. [205]

In the United States District Court in and for the Northern District of California, 1st Div.

UNITED STATES

vs.

THOMAS ANDREWS, *alias* ———, GEORGE POOLE, *alias* ———, et al.

Bond to Appear on Writ of Error—Thomas Andrews.

KNOW ALL MEN BY THESE PRESENTS: That I, THOMAS ANDREWS, *alias* Thomas J. Murphy, as principal, and AMBROSE DUNN, 367 Perkins St., Oakland, Cal., and FLETCHER BAKER, 2869 Union St., San Francisco, California,

as sureties, are held and firmly bound unto the UNITED STATES OF AMERICA in the full and just sum of Five Thousand Dollars (\$5,000.00), to be paid to the said UNITED STATES OF AMERICA; to which payment well and truly to be made we bind ourselves, our heirs, executors and administrators, successors and assigns, jointly and severally by these presents.

Sealed with our seals and dated this 2d day of January, A. D. 1914.

WHEREAS, at a District Court of the United States for the Northern District of California, in a suit depending in said Court between the UNITED STATES and THOMAS ANDREWS et al., numbered 5345, wherein said THOMAS, ANDREWS was charged in two counts with the crime of conspiracy to import opium into the United States and of the cause of conspiracy to receive, conceal and facilitate the transportation and concealment after importation of opium into the United States and was thereafter brought to trial on said charge before a jury and was found guilty and sentenced to be imprisoned for the term of three years in the State Penitentiary at San Quentin, California, and whereas, after such conviction said Thomas Andrews sued out in the United [206] States Circuit Court of Appeals for the Ninth Circuit a writ of error to said District Court for the Northern District of California, and whereas, by an order made by the Honorable Maurice T. Dooling, Judge of the United States District Court for the Northern District of California, on the 24th day of December, A. D. 1913,

and the said THOMAS ANDREWS has been admitted to bail pending the said determination in said United States Circuit Court of Appeals for the Ninth Circuit of said writ of error, in the sum of Five Thousand Dollars (\$5,000.00) and a Bond for the payment of costs upon said writ of error has been filed in the sum of One Hundred Dollars (\$100.00).

Now, the condition of the above obligation is such that if the said Thomas Andrews, *alias* Thomas Murphy, shall personally appear and render himself in judgment on the final determination in said United States Circuit Court of Appeals for the Ninth Circuit, of said writ of error at and before the said District Court of the United States aforesaid or whenever or wherever he may be required to answer said judgment and all matters and things that may be adjudged against him, *whenever* the same may be prosecuted, and render himself amendable to any and all Court orders and process in the premises and not depart the said District Court and said District without leave first obtained, and if said writ of error shall be dismissed and he shall appear and render himself in execution under the judgment herein, then the above obligation to be void; else to remain in full force and virtue.

THOMAS J. MURPHY.

AMBROSE DUNN.

FLETCHER BAKER.

Taken and acknowledged before me this 2d day of January, 1914.

[Seal]

FRANCIS KRULL. [207]

Northern District of California,—ss.

Ambrose Dunn and Fletcher Baker, each being duly sworn, each for himself deposes and says that he is a householder in said District, and is worth the sum of Five Thousand (\$5,000) Dollars, exclusive of property exempt from execution, and over and above all debts and liabilities.

AMBROSE DUNN.

FLETCHER BAKER.

Subscribed and sworn to before me this 2d day of January, A. D. 1914.

[Seal]

FRANCIS KRULL,

United States Commissioner, for the Northern District of California, at San Francisco.

The form of the foregoing bond and the sufficiency of the sureties thereto is hereby approved.

T. H. SELVAGE,

Asst. United States Attorney.

Approved:

[Seal]

FRANCIS KRULL,

United States Commissioner, Northern District of California.

[Endorsed]: Filed Jan. 2, 1914. W. B. Maling, Clerk. By Francis Krull, Deputy Clerk. [208]

*In the United States District Court in and for the
Northern District of California.*

No. 5345.

UNITED STATES

vs.

THOMAS ANDREWS, *alias* ——, GEORGE
POOLE, *alias* ——, et al.

Bond to Appear on Writ of Error—George Poole.

KNOW ALL MEN BY THESE PRESENTS:
That I, GEORGE POOLE, *alias* George Moore, as
principal, MARGARET BARRIS, EDWARD
GEORGE SMITH, MRS. MAMIE KOCH, and
FRANK T. BARRIS, as sureties, are held and
firmly bound unto the UNITED STATES OF
AMERICA in the full and just sum of FIVE THOU-
SAND DOLLARS' (\$5,000), to be paid to the said
UNITED STATES OF AMERICA; to which pay-
ment well and truly to be made we bind ourselves,
our heirs, executors and administrators, successors
and assigns, jointly and severally by these presents.

Sealed with our seals dated this 27th day of De-
cember, A. D. 1913.

WHEREAS, at a District Court of the United
States for the Northern District of California, in a
suit depending in said court between the UNITED
STATES and GEORGE POOLE et al., numbered
5345, wherein said GEORGE POOLE was charged
with the crime of conspiracy, to import, receive, con-
ceal and facilitate the transportation and conceal-
ment after importation of opium, and was thereafter

brought to trial on said charge before a jury and was found guilty and sentenced to be imprisoned for the term of three years in the State Penitentiary at San Quentin, California, and whereas, after such conviction said George Poole sued out in the United States Circuit Court of Appeals for the Ninth Circuit a writ of error to said District Court for the Northern District of California, and whereas, [209] by an order made by the Honorable Maurice T. Dooling, Judge of the United States District Court for the Northern District of California, on the 24th day of December, A. D. 1913, the said GEORGE POOLE has been admitted to bail pending the said determination in said United States Circuit Court of Appeals for the Ninth Circuit of said writ of error, in the sum of Five Thousand Dollars (\$5,000) and a Bond for the payment of costs upon said writ of error has been filed in the sum of One Hundred Dollars (\$100.00).

Now, the condition of the above obligation is such that if the said GEORGE POOLE shall personally appear and render himself in judgment on the final determination in said United States Circuit Court of Appeals for the Ninth Circuit, of said writ of error at and before the said District Court of the United States aforesaid or whenever or wherever he may be required to answer said judgment and all matters and things that may be adjudged against him, whenever the same may be prosecuted, and render himself amendable to any and all Court Orders and process in the premises and not depart the said District Court and said District without leave first ob-

tained, and if said writ of error shall be dismissed and he shall appear and render himself in execution under the judgment herein, then the above obligation to be void; else to remain in full force and virtue.

GEO. O. POOLE.

MRS. MARGARET BARRIS.

EDWARD GEORGE SMITH.

MRS. MAMIE KOCH.

FRANK T. BARRIS. [210]

Acknowledged before me the day and year first above written.

[Seal]

FRANCIS KRULL,

United States Commissioner for the Northern District of California, at San Francisco.

Approved:

T. H. SELVAGE.

Assistant United States Attorney.

Approved:

[Seal]

FRANCIS KRULL,

United States Commissioner, Northern District of California.

Northern District of California,—ss.

Margaret Barris, Edward George Smith, Mrs. Mamie Koch and Frank Barris, being duly sworn, each for himself and herself deposes and says, that he is and she is a householder in said District, and is worth the sum of Five Thousand (\$5,000) Dollars, exclusive of property exempt from execution, and over and above all debts and liabilities.

MRS. MARGARET BARRIS.

EDWARD GEORGE SMITH.

MRS. MAMIE KOCH.

FRANK T. BARRIS.

Subscribed and sworn to before me this 27th day of December, A. D. 1913.

[Seal]

FRANCIS KRULL,

United States Commissioner for the Northern District of California, at San Francisco.

[Endorsed]: Filed Dec. 27, 1913. W. B. Maling, Clerk. By Francis Krull, Deputy Clerk. [211]

At a stated term, to wit, the October Term, A. D. 1914, of the United States Circuit Court of Appeals for the Ninth Circuit, held in the courtroom thereof, in the City and county of San Francisco, in the State of California, on Wednesday, the eighteenth day of November, in the year of our Lord one thousand nine hundred and fourteen. Present: The Honorable WILLIAM B. GILBERT, Circuit Judge, Presiding; Honorable ERSKINE M. ROSS, Circuit Judge; Honorable CHARLES E. WOLVERTON, District Judge.

No. 2508.

THOMAS ANDREWS et al.,

Plaintiffs in Error,

vs.

THE UNITED STATES OF AMERICA,

Defendant in Error.

**Order Vacating Order and Judgment of Dismissal
and Reinstating Cause.**

On consideration of the petition of counsel for the plaintiffs in error, filed November 2, 1914, for an order allowing the plaintiffs in error to file in this

court a certified Transcript of the Record on Return to the writ of error heretofore sued out by the plaintiffs in error from this court to the District Court of the United States for the Northern District of California, First Division, in the above-entitled cause, and for an order allowing the plaintiffs in error to docket the cause in this court; and on consideration of the petition of counsel for the plaintiffs in error, filed November 17, 1914, for a rehearing, and on consideration of the affidavits and points and authorities filed, and of the oral arguments made by counsel herein, and good cause therefor appearing:

It is ORDERED that the Order and Judgment of Dismissal under Subdivision 1 of Rule 16 of the Rules of Practice of this Court, made and entered by this court in the above-entitled cause on the second day of November, A. D. 1914, be, and hereby are vacated, and that [212] this cause be, and hereby is reinstated.

I hereby certify that the foregoing is a full, true and correct copy of an original Order made and entered in the within entitled cause.

ATTEST my hand and the Seal of the said the United States Circuit Court of Appeals for the Ninth Circuit, at the City of San Francisco, in the State of California, this nineteenth day of November, A. D. 1914.

[Seal]

F. D. MONCKTON,

Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

By Meredith Sawyer,
Deputy Clerk.

[Endorsed]: Filed Nov. 19, 1914. W. B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk. [213]

At a stated Term, to wit, the October Term, A. D. 1914, of the United States Circuit Court of Appeals for the Ninth Circuit, held in the courtroom thereof, in the City and County of San Francisco, in the State of California, on Wednesday, the eighteenth day of November, in the year of our Lord one thousand nine hundred and fourteen. Present: The Honorable WILLIAM B. GILBERT, Circuit Judge, Presiding; Honorable ERSKINE M. ROSS, Circuit Judge; Honorable CHARLES E. WOLVERTON, District Judge.

No. 2508.

THOMAS ANDREWS et al.,

Plaintiffs in Error,

vs.

THE UNITED STATES OF AMERICA,

Defendant in Error.

**Order Allowing Plaintiffs in Error Thirty Days
Within Which to File Certified Transcript of the
Record on Writ of Error, etc.**

On motion of Mr. Bruce Glidden, counsel for the plaintiffs in error, and good cause therefor appearing, it is ORDERED that the plaintiffs in error be, and hereby are allowed thirty (30) days from this date within which to file in this Court a certified Transcript of the Record on Return on the writ of

error heretofore sued out by the plaintiffs in error from this Court to the District Court of the United States for the Northern District of California, First Division, in the above-entitled cause, and to docket the above-entitled cause on said writ of error in this Court. [214]

I hereby certify that the foregoing is a full, true and correct copy of an original Order made and entered in the within entitled cause.

ATTEST my hand and the Seal of the said the United States Circuit Court of Appeals for the Ninth Circuit, at the City of San Francisco, in the State of California, this nineteenth day of November, A. D. 1914.

[Seal] F. D. MONCKTON,
Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

By Meredith Sawyer,
Deputy Clerk.

[Endorsed]: Filed Nov. 19, 1914. W. B. Maling,
Clerk. By C. W. Calbreath, Deputy Clerk. [215]

**[Certificate of Clerk U. S. District Court to
Transcript of Record.]**

I, W. B. Maling, Clerk of the District Court of the United States of America, for the Northern District of California, do hereby certify that the foregoing 215 pages, numbered from 1 to 215, inclusive, contain a full, true and correct Transcript of certain records and proceedings, in the case of the United States of America vs. Thomas Andrews et al.,

numbered 5345, as the same now remain on file and of record in the office of the Clerk of said District Court; said Transcript having been prepared pursuant to and in accordance with the "Praecipe" (copy of which is embodied in this Transcript), and the instructions of the attorneys for plaintiffs in error and appellants herein.

I further certify that the costs for preparing and certifying the foregoing Transcript on Writ of Error is the sum of One Hundred Twenty-two Dollars and Ten Cents (\$122.10), and that the same has been paid to me by the attorneys for the appellants herein.

Annexed hereto is the Original Citation on Writ of Error and the Original Writ of Error with the return of the said District Court to said Writ of Error attached thereto.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said District Court, this 10th December, A. D. 1914.

[Seal]

W. B. MALING,
Clerk.

By C. Calbreath,
Deputy Clerk.

[Ten Cents Internal Revenue Stamp. Canceled
Dec. 10, 1914. C. W. C.] [216]

Writ of Error—Original.

UNITED STATES OF AMERICA,—ss.

The President of the United States of America, to the Honorable, the Judges of the District Court of the United States for the Northern District of California, Greeting:

Because, in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said District Court, before you, or some of you, between Thomas Andrews, *alias* Thomas J. Murphy, and George Poole, *alias* George Moore, plaintiffs in error, and the United States, defendant in error, a manifest error hath happened, to the great damage of the said Thomas Andrews, *alias* Thomas J. Murphy, and George Poole, *alias* George Moore, plaintiffs in error, as by their complaint appears:

We, being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the United States Circuit Court of Appeals for the Ninth Circuit, together with this writ, so that you have the same at the City of San Francisco, in the State of California, within thirty days from the date hereof, in the said Circuit Court of Appeals, to be then and there held, that, the record and proceedings aforesaid being inspected, the said Circuit Court of Appeals may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness, the Honorable MELVILLE W. FULLER, Chief Justice of the United States, the 24 day

of December, in the year of our Lord one thousand nine hundred and thirteen.

[Seal]

W. B. MALING,
Clerk U. S. District Court, Northern District of
California.

By C. W. Calbreath,
Deputy Clerk.

Allowed by:

M. T. DOOLING,

Judge of the District Court. [217]

[Endorsed]: No. 5345. United States Circuit Court of Appeals for the Ninth Circuit. Thomas Andrews, *alias* ———, George Poole, *alias* ——— et al., Plaintiffs in Error, vs. United States, Defendant in Error. Writ of Error. Filed Dec. 24, 1913. W. B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk. [218]

Return to Writ of Error.

The answer of the Judges of the District Court of the United States of America, for the Northern District of California, to the within Writ of Error.

As within we are commanded, we certify under the seal of our said District Court, in a certain schedule to this Writ annexed, the record and all proceedings of the plaint whereof mention is within made, with all things touching the same, to the United States Circuit Court of Appeals, for the Ninth Circuit, within mentioned, at the day and place within contained.

We further certify that a copy of this Writ was

on the 7th day of December, A. D. 1914, duly lodged in the case in this Court for the within named defendants in Error.

By the Court:

[Seal] W. B. MALING,
Clerk United States District Court, Northern District of California.

By C. W. Calbreath,
Deputy Clerk.

[Ten Cents Internal Revenue Stamp. Canceled
Dec. 10, 1914, C. W. C.] [219]

Citation on Appeal—Original.

UNITED STATES OF AMERICA,—ss.

The President of the United States, to the United States of America, Greeting:

You are hereby cited and admonished to be and appear at a United States Circuit Court of Appeals for the Ninth Circuit, to be holden at the city of San Francisco, in the State of California, within thirty days from the date hereof, pursuant to an order allowing an appeal of record in the Clerk's Office of the United States District Court for the Northern District of California, wherein George Poole and Thomas Murphy are appellants, and you are appellee, to show cause, if any there be, why the decree rendered against the said appellant, as in the said order allowing appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

WITNESS, the Honorable MAURICE T. DOO-

LING, United States District Judge for the Northern District, California, this 22d day of June, A. D. 1914.

M. T. DOOLING,
United States District Judge. [220]
Service admitted this 22d June, 1914.

JNO. W. PRESTON,
U. S. Dist. Atty.

[Endorsed]: No. 5345. U. S. Circuit Court of Appeals for the Ninth Circuit. Geo. Poole and T. Andrews, Appellants, vs. United States. Citation on Appeal. Filed Jun. 22, 1914. W. B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk. [221]

[Endorsed]: No. 2508. United States Circuit Court of Appeals for the Ninth Circuit. Thomas Andrews, *alias* Thomas J. Murphy, and George Poole, *alias* George Moore, Plaintiffs in Error, vs. The United States of America, Defendant in Error. Transcript of Record. Upon Writ of Error to the United States District Court of the Northern District of California, First Division.

Filed December 10, 1914.

FRANK D. MONCKTON,
Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

By Meredith Sawyer,
Deputy Clerk.

